

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

THE BIRTHS, DEATHS AND MARRIAGES
REGISTRATION ACT, 1886,

AS MODIFIED UP TO 1ST MAY, 1911.

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STATEMENT OF REPEALS AND AMENDMENTS.

REPEALED IN PART	II of 1891, s. 4 (2). XII of 1891. IX of 1911.
AMENDED	XVI of 1890. IX of 1911.

The following changes have been made in reprinting the Act :—

- (1) repealed matter has been omitted, explanatory notes being inserted:
- (2) amendments have been inserted in their proper places, with explanatory footnotes:
- (3) some further footnotes have been added for convenience of reference.

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ACT NO. VI OF 1886.¹

[8th March, 1886.]

An Act to provide for the voluntary Registration of certain Births and Deaths, for the establishment of General Registry Offices for keeping Registers of certain Births, Deaths and Marriages, and for certain other purposes.

[As modified up to 1st May, 1911.]

XV of 1872

XV of 1865

WHEREAS it is expedient to provide for the voluntary registration of births and deaths among certain classes of persons, for the more effectual registration of those births and deaths and of the marriages registered under Act III of 1872² or the Indian Christian Marriage Act, 1872,² and of certain marriages registered under the Parsi Marriage and Divorce Act, 1865,³ and for the establishment of general registry offices for keeping registers of those births, deaths and marriages;

And whereas it is also expedient to provide for the authentication and custody of certain existing registers made otherwise than in the performance of a duty specially enjoined by the law of the country in which the registers were kept, and to declare that copies of the entries in those registers shall be admissible in evidence;

It

¹ For Statement of Objects and Reasons, see *Gazette of India*, 1885, Pt. V, p. 12; for Report of the Select Committee, see *ibid*, 1886, Pt. IV, p. 103; and for Proceedings in Council, see *ibid*, 1885, Supplement, pp. 14 and 87, and *ibid*, 1886, p. 290.

² *Genl. Acts*, Vol. II.

³ *Genl. Acts*, Vol. I.

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(Chapter I.—Preliminary.)

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title
and com-
mencement,

1. (1) This Act may be called the Births, Deaths and Marriages Registration Act, 1886; and

(2) It shall come into force on such day¹ as the Governor General in Council, by notification in the Gazette of India, directs.

* * * * *

Local extent,

2. This Act extends to the whole of British India² and applies also, within the dominions of Princes and States in India in alliance with Her Majesty, to British subjects in those dominions.

Definitions

3. In this Act, unless there is something repugnant in the subject or context,—

“sign” includes mark, when the person making the mark is unable to write his name:

“prescribed” means prescribed by a rule made by the Governor General in Council under this Act: and

“Registrar of Births and Deaths” means a Registrar of Births and Deaths appointed under this Act.

4. Nothing

¹ The 1st October, 1888, *see* Gazette of India, 1888, Pt I, p. 336.

² Sub-section (3) of s 1, which was repealed by the Repealing and Amending Act, 1891 (XII of 1891), was as follows:—

“(3) Any power conferred by the Act to make rules or to issue orders may be exercised at any time after the passing of this Act; but a rule or order so made or issued shall not take effect until the Act comes into force”

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ided by the
1899), Ben
the British
Bal Code
The Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), *see* the First Schedule and s 4, Bur Code. It had been previously extended there by notification under s 5 of the Scheduled Districts Act, 1874 (XIV of 1874), *see* Gazette of India, 1888, Pt I, p. 528

1856.] *Births, Deaths and Marriages Registration.*
(Chapter I—Preliminary Chapter II.—General
Registry Offices of Births, Deaths and Marriages.)

4. Nothing in this Act, or in any rule made under this Act, shall affect any law heretofore or hereafter passed providing for the registration of births and deaths within particular local areas. Saving of local laws.

5. All powers conferred by this Act may be exercised from time to time as occasion requires. Powers exercisable from time to time.

CHAPTER II.

GENERAL REGISTRY OFFICES OF BIRTHS, DEATHS AND MARRIAGES.

6. (1) Each Local Government—

(a) shall establish a general registry office for keeping such certified copies of registers of births and deaths registered under this Act, or marriages registered under Act III of 1872 (*to provide a form of marriage in certain cases*) or the Indian Christian Marriage Act, 1872,¹ or, beyond the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Bombay, under the Parsi Marriage and Divorce Act, 1865,² as may be sent to it under this Act, or under any of the three last-mentioned Acts, as amended by this Act;³ and

Establishment of general registry offices and appointment of Registrars General.

(b) may

¹ Genl. Acts, Vol II

² Genl. Acts, Vol I

³ For General Registry Offices appointed for—

(a) Ajmer-Merwara, *see* A. J. R. and O.;

(b) Assam, *see* Assam Gazette, 1888, Notification No. 118 J, dated 10th October;

(c) Bombay, *see* Bom. R. and O.;

(d) Burma, *see* Bur. R. M.;

(e) Coorg, *see* Coorg R. and O.;

(f) Madras, *see* Mad R. and O.,

(g) North-West Frontier Province, *see* Gazette of India, 1901, Pt. II, p. 1304;

(h) Punjab, *see* Punj. R. and O.;

(i) United Provinces of Agra and Oudh, *see* U. P. R. and O.

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(Chapter II.—General Registry Offices of Births,
Deaths and Marriages.)

(b) may appoint to the charge of that office an officer, to be called the Registrar General of Births, Deaths and Marriages, for the territories under its administration¹ :

(2) Provided that the Governor of Bombay in Council may, with the previous sanction of the Governor General in Council, establish two general registry offices, and appoint two Registrars General of Births, Deaths and Marriages for the territories under his administration; one of such general registry offices and of such Registrars General being established and appointed for Sindh and the other for the other territories under the administration of the Governor of Bombay in Council.

Indexes to be kept at general registry office.

7. Each Registrar General of Births, Deaths and Marriages shall cause indexes of all the certified copies of registers sent to his office under this Act or under Act III of 1872,² the Indian Christian XV of 1872. Marriage Act, 1872,² or the Parsi Marriage and Divorce Act, 1865,³ as amended by this Act, to be XV of 1866 made and kept in his office in the prescribed form.

Indexes to be open to inspection.

8. Subject to the payment of the prescribed fees, the indexes so made shall be at all reasonable times open to inspection by any person applying to inspect them, and copies of entries in the certified copies of the

¹ For Registrars General appointed for—

(a) Ajmer-Merwara, see Aj. R. and O. ;

(b) Assam, see Assam Gazette, 1888, Notification No. 118 J, dated 10th October,

(c) Bombay, see Bom. R. and O. ;

(d) P. R. and O. 1903, Pt. II, p. 1165,

(e) P. R. and O. 459; Bur. R. M. ;

(f) C. R. and O. ;

(g) Coorg, see Coorg R. and O. ;

(h) Madras, see Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 208;

(i) North-West Frontier Province, see Gazette of India, 1901, Pt. II, p. 1304;

(j) Punjab, see Punjab Gazette, 1910, Pt. I, p. 948;

(k) United Provinces of Agra and Oudh, see U. P. R. and O.

² Genl. Acts, Vol. II.

³ Genl. Acts, Vol. I.

1886.] *Births, Deaths and Marriages Registration.*
 (Chapter II.—General Registry Offices of Births,
 Deaths and Marriages Chapter III—Regis-
 tration of Births and Deaths)

the registers to which the indexes relate shall be given to all persons applying for them.

9. A copy of an entry given under the last fore-
 going section shall be certified by the Registrar General of Births, Deaths and Marriages, or by an officer authorized in this behalf by the Local Government,¹ and shall be admissible in evidence for the purpose of proving the birth, death or marriage to which the entry relates.

Copies of entries to be admissible in evidence.

10. Each Registrar General of Births, Deaths and Marriages shall exercise a general superintendence over the Registrars of Births and Deaths in the territories for which he is appointed.

Superintendence of Registrars by Registrar General.

CHAPTER III.

REGISTRATION OF BIRTHS AND DEATHS.

A.—Application of this Chapter.

11. (1) The persons whose births and deaths shall, in the first instance, be registrable under this Chapter are the following, namely:—

Persons whose births and deaths are registrable.

(a) in British India, the members of every race, sect or tribe to which the Indian Succession Act, 1865,² applies, and in respect of which an order under section 332 of that Act is not for the time being in force, and all persons professing the Christian religion;

(b) in

X of 1865.

¹ For officer authorized to certify copies of entries given under s 8 in—

(a) Assam, see p. 263 of the Assam Manual of Local Rules and Orders, Ed 1893, and in Eastern Bengal and Assam, see Eastern Bengal and Assam Manual, 1893, I, p. 1357;

...
 ...
 ...

*Births, Deaths and Marriages Registration. [ACT VI
(Chapter III.—Registration of Births and Deaths.)*

(b) in the dominions of Princes and States in India in alliance with Her Majesty, British subjects being members of a like race, sect or tribe, or professing the Christian religion :

(2) But the Local Government, by notification in the official Gazette, may, with the previous approval of the Governor General in Council, extend the operation of this Chapter to any other class of persons either generally or in any local area.

B.—Registration Establishment.

Power for
Local Gov-
ernment to
appoint Re-
gistrars for
its territo-
ries.

12. The Local Government may appoint, either by name or by virtue of their office, so many persons as it thinks necessary to be Registrars of Births and Deaths for such local areas within the territories under its administration as it may define and, if it sees fit, for any class of persons within any part of those territories.

Power for
Governor
General in
Council to
appoint Re-
gistrars for
Native
States.

13. The Governor General in Council may, by notification in the Gazette of India, appoint, either by name or by virtue of their office, so many persons as he thinks necessary to be Registrars of Births and Deaths for such local areas within the dominions of any Prince or State in India in alliance with Her Majesty

¹ As to Registrars appointed under this section for—

(a) Ajmer-Merwara, see Gazette of India, 1910, Pt. II, p. 932.

(b) Assam, see Assam List of Local Rules and Orders, Ed. 1893, p. 263;

(c) Bombay, see Bom. R. and O.;

(d) North B. and F. States, see Bom. R. and O.;

(e) India, 1903, Pt. II, p. 1165;
Gazette, 1906, Pt. I, p. 795;

(f) Provinces List of Local Rules

Majesty as he may define and, if he sees fit, for any class of persons within any part of those dominions.¹

14. Every Registrar of Births and Deaths shall be deemed to be a public servant within the meaning of the Indian Penal Code²

15. (1) The Local Government or the Governor General in Council, as the case may be, may suspend, remove or dismiss any Registrar of Births and Deaths.

(2) A Registrar of Births and Deaths may resign by notifying in writing to the Local Government or to the Governor General in Council, as the case may be, his intention to do so, and, on his resignation being accepted by the Local Government or the Governor General in Council, he shall be deemed to have vacated his office.

16. (1) Every Registrar of Births and Deaths shall have an office in the local area, or within the part of the territories or dominions for which he is appointed.

(2) Every Registrar of Births and Deaths to whom the Local Government may direct this sub-section

¹ For Registrars of Births and Deaths appointed under this section for—

- [illegible]

* Genl. Acts, Vol. I.

*Births, Deaths and Marriages Registration. [ACT VI
(Chapter III.—Registration of Births and Deaths.)*

section to apply shall attend at his office for the purpose of registering births and deaths on such days and at such hours as the Registrar General of Births, Deaths and Marriages may direct, and shall cause to be placed in some conspicuous place on or near the outer door of his office his name, with the addition of Registrar of Births and Deaths for the local area or class for which he is appointed, and the days and hours of his attendance.

Absence of Registrar or vacancy in his office.

17. (1) When any Registrar of Births and Deaths to whom the Local Government may direct this section to apply,¹ not being a Registrar of Births and Deaths for a local area in the town of Calcutta, Madras or Bombay, is absent, or when his office is temporarily vacant, any person whom the Registrar General of Births, Deaths and Marriages appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's office is situate, or such other officer as the Local Government appoints in this behalf, shall be the Registrar of Births and Deaths during such absence or until the Local Government fills the vacancy.

(2) When any such Registrar of Births and Deaths for a local area in the town of Calcutta, Madras or Bombay is absent, or when his office is temporarily vacant, any person whom the Registrar General of Births, Deaths and Marriages appoints in this behalf shall be the Registrar of Births and Deaths during such absence or until the Local Government fills the vacancy.

(3) The Registrar General of Births, Deaths and Marriages shall report to the Local Government all appointments made by him under this section.

Register books to be supplied and preservation of records to be provided for.

18. The Local Government shall supply every Registrar of Births and Deaths with a sufficient number of register books of births and of register books of deaths, and shall make suitable provision for

¹ The section has been declared by the Government of Madras to apply to all Registrars appointed by that Government, under the notification issued under s. 12, see Mad. R. and O.

1886.] *Births, Deaths and Marriages Registration.*
(Chapter III.—Registration of Births and Deaths.)

for the preservation of the records connected with the registration of births and deaths

C.—Mode of Registration.

19. Every Registrar of Births and Deaths, on receipt of notice of a birth or death within the local area or among the class for which he is appointed, shall, if the notice is given within the prescribed time and in the prescribed mode by a person authorized by this Act to give the notice, forthwith make an entry of the birth or death in the proper register book :

Duty of Registrar to register births and deaths of which notice is given.

Provided that—

- (a) if he has reason to believe the notice to be in any respect false, he may refuse to register the birth or death until he receives an order from the Judge of the District Court directing him to make the entry and prescribing the manner in which the entry is to be made; and
- (b) he shall not enter in the register the name of any person as father of an illegitimate child, unless at the request of the mother and of the person acknowledging himself to be the father of the child

20. Any of the following persons may give notice of a birth, namely :—

Persons authorized to give notice of birth.

- (a) the father or mother of the child;
- (b) any person present at the birth;
- (c) any person occupying, at the time of the birth, any part of the house wherein the child was born and having knowledge of the child having been born in the house;
- (d) any medical practitioner in attendance after the birth and having personal knowledge of the birth having occurred;
- (e) any person having charge of the child.

21. Any

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(Chapter III.—Registration of Births and Deaths.)

Persons
authorized
to give notice
of death.

21. Any of the following persons may give notice of a death, namely :—

- (a) any relative of the deceased having knowledge of any of the particulars required to be registered concerning the death;
- (b) any person present at the death;
- (c) any person occupying, at the time of the death, any part of the house wherein the death occurred and having knowledge of the deceased having died in the house;
- (d) any person in attendance during the last illness of the deceased;
- (e) any person who has seen the body of the deceased after death.

Entry of
birth or
death to be
signed by
person giving
notice.

22. (1) When an entry of a birth or death has been made by the Registrar of Births and Deaths under section 19, the person giving notice of the birth or death must sign the entry in the register in the presence of the Registrar :

¹ [Provided that it shall not be necessary for the person giving notice to attend before the Registrar or to sign the entry in the register if he has given such notice in writing and has furnished to the satisfaction of the Registrar such evidence of his identity as may be required by any rules made by the Local Government in this behalf.]

(2) Until the entry has been so signed, ² [or the conditions specified in the proviso to sub-section (1) have been complied with] the birth or death shall not be deemed to be registered under this Act.

(3) When the birth of an illegitimate child is registered, and the mother and the person acknowledging himself to be the father of the child jointly request

¹ This proviso was added by the Births, Deaths and Marriages Registration (Amendment) Act, 1911 (IX of 1911), s. 2 (1)

² These words were inserted by the Births, Deaths and Marriages Registration (Amendment) Act, 1911 (IX of 1911), s. 2 (2).

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(Chapter III.—Registration of Births and Deaths)

request that that person may be registered as the father, the mother and that person must both sign the entry in the register in the presence of the Registrar.

23. The Registrar of Births and Deaths shall, on application made at the time of registering any birth or death by the person giving notice of the birth or death, and on payment by him of the prescribed fee,¹ give to the applicant a certificate in the prescribed form, signed by the Registrar, of having registered the birth or death.

Grant of certificate of registration of birth or death.

24. (1) Every Registrar of Births and Deaths in British India shall send to the Registrar General of Births, Deaths and Marriages for the territories within which the local area or class for which he is appointed is situate or resides, at the prescribed intervals, a true copy certified by him, in the prescribed form, of all the entries of births and deaths in the register book kept by him since the last of those intervals :

Duty of Registrars as to sending certified copies of entries in register books to Registrar General.

Provided that in the case of Registrars of Births and Deaths who are clergymen of the Churches of England, Rome and Scotland the Registrar may, if so directed by his ecclesiastical superior, send the certified copies in the first instance to that superior, who shall send them to the proper Registrar General of Births, Deaths and Marriages.

In this sub-section "Church of England" and "Church of Scotland" mean the Church of England and the Church of Scotland as by law established respectively; and "Church of Rome" means the Church which regards the Pope of Rome as its spiritual head.

(2) The provisions of sub-section (1) shall apply to every Registrar of Births and Deaths in the dominions of any Prince or State in India in alliance with Her Majesty, with this modification that the certified

¹ As to stamps in which such fees are to be paid, see Gazette of India, 1899, Pt. I, p. 82, para 14 (c) of Notification No. 786 S R.

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(Chapter III.—Registration of Births and Deaths.)

certified copies referred to in that sub-section shall be sent to such one of the Registrars General of Births, Deaths and Marriages as the Governor General in Council, by notification¹ in the Gazette of India, appoints in this behalf

Searches and
copies of
entries in
register
books.

25. (1) Every Registrar of Births and Deaths shall, on payment of the prescribed fees, at all reasonable times, allow searches to be made in the register books kept by him, and give a copy of any entry in the same.

(2) Every copy of an entry in a register book given under this section shall be certified by the Registrar of Births and Deaths, and shall be admissible in evidence for the purpose of proving the birth or death to which the entry relates.

Exceptional
provision for
registration
of certain
births and
deaths.

26. Notwithstanding anything in section 19, the "[Local Government] may make rules" authorizing Registrars of Births and Deaths, on conditions and in circumstances to be specified in the rules, to register births and deaths occurring outside the local areas or classes for which they are appointed.

D.—Penalty for False Information.

Penalty for
wilfully
giving false
information.

27. If any person wilfully makes, or causes to be made, for the purpose of being inserted in any register of births or deaths, any false statement in connection with any notice of a birth or death under this Act, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

28. (1) If

¹ For an instance of such notification, see Gazette of India, 1899, Pt. I, p. 424

² These words were substituted for the words "Governor General in Council" by the Births, Deaths and Marriages Registration (Amendment) Act, 1911 (IX of 1911), s. 3

And all rules heretofore made by the Governor General in Council under this Act shall, after the commencement of Act IX of 1911, be deemed to have been made by the Local Government, see s. 6 of Act IX of 1911.

³ For rules made under s. 26 conjointly with ss. 23 and 36, see Gazette of India, 1893, Pt. I, p. 336, and *ibid*, 1894, Pt. I, p. 436

1886.] *Births, Deaths and Marriages Registration.*
(Chapter III.—Registration of Births and Deaths,
Chapter IV.—Amendment of Marriage Acts.)

E.—Correction of Errors.

28. (1) If it is proved to the satisfaction of a Registrar of Births and Deaths that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, he may, subject to such rules as may be made by the [Local Government] with respect to the conditions and circumstances on and in which errors may be corrected, correct the error by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction.

Correction of entry in register of births or deaths.

(2) If a certified copy of the entry has already been sent to the Registrar General of Births, Deaths and Marriages, the Registrar of Births and Deaths shall make and send a separate certified copy of the original erroneous entry and of the marginal correction therein made

CHAPTER IV

AMENDMENT OF MARRIAGE ACTS.

29. After section 13 of Act III of 1872² (to provide a form of marriage in certain cases) the following section shall be inserted, namely:—

Addition of new section after section 13, Act III of 1872.

"13A. The Registrar shall send to the Registrar General of Births, Deaths and Marriages for the territories within which his district is situate at such intervals as the Governor General in Council, from time to time directs, a true copy certified by him, in such form as the Governor General in Council, from time to time prescribes, of all entries made by him in

Transmission of certified copies of entries in marriage-certificate book to the Registrar General of Births, Deaths and Marriages

² These words were substituted for the words "Governor General in Council" by the Births, Deaths and Marriages Registration (Amendment) Act, 1911 (IX of 1911), s. 3

And all rules heretofore made by the Governor General in Council under this Act shall, after the commencement of Act IX of 1911, be deemed to have been made by the Local Government, see s. 6 of Act IX of 1911.

² Genl. Acts, Vol. II.

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(Chapter III.—Registration of Births and Deaths.)

certified copies referred to in that sub-section shall be sent to such one of the Registrars General of Births, Deaths and Marriages as the Governor General in Council, by notification¹ in the Gazette of India, appoints in this behalf.

Searches and copies of entries in register books.

25. (1) Every Registrar of Births and Deaths shall, on payment of the prescribed fees, at all reasonable times, allow searches to be made in the register books kept by him, and give a copy of any entry in the same.

(2) Every copy of an entry in a register book given under this section shall be certified by the Registrar of Births and Deaths, and shall be admissible in evidence for the purpose of proving the birth or death to which the entry relates.

Exceptional provision for registration of certain births and deaths.

26. Notwithstanding anything in section 19, the "[Local Government] may make rules² authorizing Registrars of Births and Deaths, on conditions and in circumstances to be specified in the rules, to register births and deaths occurring outside the local areas or classes for which they are appointed.

D—Penalty for False Information.

Penalty for wilfully giving false information.

27. If any person wilfully makes, or causes to be made, for the purpose of being inserted in any register of births or deaths, any false statement in connection with any notice of a birth or death under this Act, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

28. (1) If

¹ For an instance of such notification, see Gazette of India, 1899, Pt. I, p. 421.

² These words were substituted for the words "Governor General in Council" by the Births, Deaths and Marriages Registration (Amendment) Act, 1911 (IX of 1911), s. 3.

And all rules heretofore made by the Governor General in Council under this Act shall, after the commencement of Act IX of 1911, be deemed to have been made by the Local Government, see s. 6 of Act IX of 1911.

³ For rules made under s. 26 conjointly with ss. 23 and 36, see Gazette of India, 1883, Pt. I, p. 336, and *ibid*, 1894, Pt. I, p. 436.

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(Chapter V.—*Special Provisions as to certain existing Registers.*)

CHAPTER V.

SPECIAL PROVISIONS AS TO CERTAIN EXISTING
REGISTERS.

32. If any person in British India, or in the dominions of any Prince or State in India in alliance with Her Majesty, has for the time being the custody of any register or record of birth, baptism, naming, dedication, death or burial of any persons of the classes referred to in section 11, sub-section (1), or of any register or record of marriage of any persons of the classes to which Act III of 1872¹ or the Indian Christian Marriage Act, 1872,² or the Parsi Marriage and Divorce Act, 1865,³ applies, and if such register or record has been made otherwise than in performance of a duty specially enjoined by the law of the country in which the register or record was kept, he may, ⁴[at any time before the first day of April, 1891,] send the register or record to the office of the Registrar General of Births, Deaths and Marriages for the territories within which he resides, or, if he resides within the dominions of any such Prince or State as aforesaid, to such one of the Registrars General as aforesaid as the Governor General in Council, by notification⁴ in the Gazette of India, directs in this behalf.

Permission to persons having custody of certain records to send them within one year to Registrar General.

XV of 1872.
XV of 1865

33. (1) The Governor General in Council may appoint so many persons as he thinks fit to be Commissioners for examining the registers or records sent to the Registrar General of Births, Deaths and Marriages under the last foregoing section.

Appointment of Commissioners to examine registers.

(2) The

¹ Genl. Acts, Vol II

² Genl. Acts, Vol I

³ These words were substituted for the words " within one year from the date on which this Act comes into force " by the Births, Deaths and Marriages Registration Act (1886) Amendment Act, 1890 (XVI of 1890), s 1, Genl Acts, Vol IV

⁴ For an instance of such notification, see Gazette of India, 1899, Pt I, p 424.

*Births, Deaths and Marriages Registration. [ACT VI
(Chapter IV.—Amendment of Marriage Acts.)*

in the said marriage-certificate book since the last of such intervals."

Amendment
of the Indian
Christian
Marriage
Act, 1872.

30. In the Indian Christian Marriage Act, 1872,¹ XV of 1872, the following amendments shall be made, namely :—

- (a) at the end of section 3, the words "Registrar General of Births, Deaths and Marriages" means a Registrar General of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act, 1886," shall be added; ^{VI of 1886.}
- (b) for the words "Secretary to the Local Government", wherever they occur, and for the words "Secretary to a Local Government" in section 79, the words "Registrar General of Births, Deaths and Marriages" shall be substituted;

* * * * *

- (d) in section 81, after the words "Registrar General of Births, Deaths and Marriages" the words "in England" shall be added.

Addition of
new section
after section
8 of the Parsi
Marriage
and Divorce
Act, 1865.
Transmission
of certified
copies of
certificates in
marriage
register to
Registrar
General of
Births,
Deaths and
Marriages.

31. After section 8 of the Parsi Marriage and Divorce Act, 1865,² the following section shall be ^{XV of 1865.} inserted, namely :—

"8A. Every Registrar, except the Registrar appointed by the Chief Justice of the High Court of Judicature at Bombay, shall, at such intervals as the Governor General in Council from time to time directs, send to the Registrar General of Births, Deaths and Marriages for the territories administered by the Local Government by which he was appointed a true copy certified by him, in such form as the Governor General, from time to time prescribes, of all certificates entered by him in the said register of marriages since the last of such intervals."

CHAPTER V.

¹ Genl. Acts, Vol. II

² Clause (c), which amended s. 62 of the Indian Christian Marriage Act, 1872 (XV of 1872), was repealed by the Indian Christian Marriage Act (1872) Amendment Act, 1891 (II of 1891), s. 4 (2), Genl. Acts, Vol. IV.

³ Genl. Acts, Vol. I.

1886.] *Births, Deaths and Marriages Registration.*
(Chapter V.—*Special Provisions as to certain existing Registers.*)

Deaths and Marriages, or by an officer or person authorized in this behalf by the Local Government,¹ and shall be admissible in evidence for the purpose of proving the birth, baptism, naming, dedication, death, burial or marriage to which the entry relates.

² 35A. (1) The Governor General in Council, if he thinks fit, may, by notification in the Gazette of India, appoint more commissions³ than one for the purposes of this Chapter, each such commission consisting of so many and such members as he may, by a like notification, nominate thereto by name or by office, and having its functions restricted to the disposal, under this Act and the rules thereunder, of the registers or records sent under section 32 to such Registrar General or Registrars General as the Governor General in Council may, by a like notification, specify in this behalf

Constitution of additional Commissions for purposes of this Chapter,

(2) If more commissions than one are appointed in exercise of the power conferred by sub section (1), then references in this Act to the Commissioners shall be construed as references to the members constituting a commission so appointed.

CHAPTER VI

¹ For officers appointed under s 35 (2) for—

- (1) Bengal, *see* Ben R and O ,
- (2) Bombay, *see* Bom R and O ,
- (3) Burma, *see* Bur R M ;
- (4) Madras, *see* Mad R and O ,
- (5) Punjab, *see* Punjab Gazette, 1910, Pt I p 948,
- (6) United Provinces, *see* U P R and O

² Section 35A was added by the Births Deaths and Marriages Registration Act (1886) Amendment Act, 1890 (XVI of 1890), s 2, Genl Acts, Vol IV

³ For Commissioners appointed in—

- (1) the Bombay Presidency, *see* Bom R and O ,
- (2) Burma, *see* Bur R M ;
- (3) Madras, *see* Mad R and O

*Births, Deaths and Marriages Registration. [ACT VI
(Chapter V.—Special Provisions as to certain existing Registers.)*

(2) The Commissioners so appointed shall hold office for such period as the Governor General in Council, by the order of appointment, or any subsequent order, directs.

Duties of
Commissioners.

34. (1) The Commissioners appointed under the last foregoing section shall enquire into the state, custody and authenticity of every such register or record as may be sent to the Registrar General of Births, Deaths and Marriages under section 32;

and shall deliver to the Registrar General a descriptive list or descriptive lists of all such registers or records, or portions of registers or records, as they find to be accurate and faithful.

(2) The list or lists shall contain the prescribed particulars and refer to the registers or records, or to the portions of the registers or records, in the prescribed manner.

(3) The Commissioners shall also certify in writing, upon some part of every separate book or volume containing any such register or record, or portion of a register or record, as is referred to in any list or lists made by the Commissioners, that it is one of the registers or records, or portions of registers or records, referred to in the said list or lists.

Searches of
lists prepared
by Commissioners
and grant of
certified
copies of
entries.

35. (1) Subject to the payment of the prescribed fees, the descriptive list or lists of registers or records, or portions of registers or records, delivered by the Commissioners to the Registrar General of Births, Deaths and Marriages shall be, at all reasonable times, open to inspection by any person applying to inspect it or them, and copies of entries in those registers or records shall be given to all persons applying for them.

(2) A copy of an entry given under this section shall be certified by the Registrar General of Births,
Deaths

1886.] *Births, Deaths and Marriages Registration.*
(Chapter V.—Special Provisions as to certain existing Registers.)

Deaths and Marriages, or by an officer or person authorized in this behalf by the Local Government,¹ and shall be admissible in evidence for the purpose of proving the birth, baptism, naming, dedication, death, burial or marriage to which the entry relates.

² 35A. (1) The Governor General in Council, if he thinks fit, may, by notification in the Gazette of India, appoint more commissions³ than one for the purposes of this Chapter, each such commission consisting of so many and such members as he may, by a like notification, nominate thereto by name or by office, and having its functions restricted to the disposal, under this Act and the rules thereunder, of the registers or records sent under section 32 to such Registrar General or Registrars General as the Governor General in Council may, by a like notification, specify in this behalf.

Constitution of additional Commissions for purposes of this Chapter.

(2) If more commissions than one are appointed in exercise of the power conferred by sub-section (1), then references in this Act to the Commissioners shall be construed as references to the members constituting a commission so appointed.

CHAPTER VI.

¹ For officers appointed under s. 35 (2) for—

- (1) Bengal, *see* Ben R and O ;
- (2) Bombay, *see* Bom R and O ,
- (3) Burma, *see* Bur R M ,
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- (5) Punjab, *see* Punjab Gazette, 1910, Pt I, p 948.
- (6) United Provinces, *see* U P R and O

² Section 35A was added by the Births Deaths and Marriages Registration Act (1886) Amendment Act, 1890 (XVI of 1890), s. 2, Genl Acts, Vol IV

³ For Commissioners appointed in—

- (1) the Bombay Presidency, *see* Bom R and O ,
- (2) Burma, *see* Bur R M ,
- (3) Madras, *see* Mad R and O

CHAPTER VI.

RULES.

Rules.

¹[36. (1) The Local Government may make rules² to carry out' the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) fix the fees payable under this Act⁴;

(b) prescribe the forms required for the purposes of this Act;

(c) prescribe

¹ Section 36 was substituted by the Births, Deaths and Marriages Registration (Amendment) Act, 1911 (IX of 1911), s. 4

The original section ran as follows —

“ 36. In addition to any other power to make rules impliedly or expressly conferred by this Act, the Governor General in Council may make rules—

(a) to fix the fees payable under this Act;

(d)
(b)

{c}

(d) to prescribe the registers to be kept and the form and manner in which Registrars of Births and Deaths* are to register births and deaths under this Act, and the intervals at which they are to send to the Registrar General of Births, Deaths and Marriages—

(e) - lists to Chapter to refer records.

(f) to prescribe the custody in which those registers or records are to be kept; and,

(g) generally, to carry out the purposes of this Act."

⁴ All rules heretofore made under this Act by the Governor General in Council.

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* For rules for the guidance of Commissioners appointed under Chapter V, see Gazette of India, 1890 and 1892, Pt. I, pp. 745 and 123, respectively.

* For fees prescribed for attendance at private residences in—

(1) Burma, see notification quoted in Bur. R. M.

(2) Madras, *see* Mad. R. and O.

For rules framed by the Government of India as to fees, see Gazette of India, 1934, Pt. I, p. 500.

1856.] *Births, Deaths and Marriages Registration.*
(Chapter VI.—Rules)

- (c) prescribe the time within which, and the mode in which, persons authorized under this Act to give notice of a birth or death to a Registrar of Births and Deaths must give the notice,
- (d) prescribe the evidence of identity to be furnished to a Registrar of Births and Deaths by persons giving notice of a birth or death in cases where personal attendance before such Registrar is dispensed with;
- (e) prescribe the registers to be kept and the form and manner in which Registrars of Births and Deaths are to register births and deaths under this Act, and the intervals at which they are to send to the Registrar General of Births, Deaths and Marriages true copies of the entries of births and deaths in the registers kept by them,
- (f) prescribe the conditions and circumstances on and in which Registrars of Births and Deaths may correct entries of births and deaths in registers kept by them;
- ¹(g) prescribe the particulars which the descriptive list or lists to be prepared by the Commissioners appointed under Chapter V are to contain, and the manner in which they are to refer to the registers or records, or portions of registers or records, to which they relate; and
- ¹(h) prescribe the custody in which those registers or records are to be kept

(3) Every

¹ For rules for the guidance of Commissioners appointed under Chapter V, framed with regard to the powers conferred by clauses (g) and (h), see Gazette of India, 1890 and 1892, Pt I, pp. 745 and 123, respectively

Births, Deaths and Marriages [ACT VI, 1886.]
Registration.

(Chapter VI.—Rules.)

(3) Every power to make rules conferred by this Act is subject to the condition of the rules being made after previous publication.

(4) All rules made under this Act shall be published in the local official Gazette, and on such publication shall have effect as if enacted in this Act.]

37. [*Procedure for making and publication of rules.*] *Rep. by the Births, Deaths and Marriages Registration (Amendment) Act, 1911 (IX of 1911), s. 5.*

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

THE NEGOTIABLE INSTRUMENTS
ACT, 1881.
(ACT XXVI OF 1881.)

AS MODIFIED UP TO THE 1st SEPTEMBER, 1909

CALCUTTA
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STATEMENTS OF REPEAL AND AMENDMENTS.

SECTION 2 REPEALED	ACT XII OF 1891.
SECTION 7 AMENDED. . . .	ACT II OF 1885, SECTION 2.
SECTION 45A INSERTED	ACT II OF 1885, SECTION 3.
SECTION 61, NEW PARAGRAPH ADDED .	ACT II OF 1885, SECTION 4.
SECTION 64, NEW PARAGRAPH ADDED .	ACT II OF 1885, SECTION 4.
SECTION 72 AMENDED	ACT VI OF 1897, SECTION 2.
SECTION 84, NEW SECTION SUBSTITUTED	ACT VI OF 1897, SECTION 3.
SECTION 101, NEW PARAGRAPH ADDED	ACT II OF 1885, SECTION 5.
SECTION 104A INSERTED	ACT II OF 1885, SECTION 6.
SECTION 108, SECOND PARAGRAPH, REPEALED	ACT II OF 1885, SECTION 7.
SECTION 109 AMENDED	ACT II OF 1885, SECTION 8.
SECTION 113 AMENDED	ACT II OF 1885, SECTION 9.
CHAPTER XVII INSERTED	ACT II OF 1885, SECTION 10
SCHEDULE REPEALED	ACT XII OF 1891. (THE FIRST SCHEDULE)

The following changes have been made in reprinting the Act :—

- (1) repealed matter has been omitted, and printed below in footnotes, explanatory notes being at the same time inserted;
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'ACT No. XXVI OF 1881.

[9th December, 1881.]

An Act to define and amend the law relating
to Promissory Notes, Bills of Exchange
and Cheques.

[As modified up to 1st September, 1909.]

WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques; It is hereby enacted as follows :—

Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Negotiable Instruments Act, 1881 :

Short title.

It extends to the whole of British India; but nothing herein contained affects the ¹Indian Paper Currency Act, 1871, section 21, or affects any local usage relating to any instrument in an oriental language : Provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the first day of March, 1882.

Local extent.
Saving of usages relating to hundis, etc.

Commencement.

III of 1871.

2. [Repeal

¹ For the Statement of Objects and Reasons, see Gazette of India, 1871, Pt. V, and

except) and
Gen. I, Bur. Code.

For summary procedure on negotiable instruments, see the Code of Civil Procedure, 1908 (Act 5 of 1908), XXX, Sch. I, Order VII, Genl. Acts, Vol. VI.

² See now the Indian Paper Currency Act, 1905 (3 of 1905), s. 24, Genl. Acts, Vol. IV.

(Chapter II.—Of Notes, Bills and Cheques.—Secs. 8-11.)

"Acceptor for honour."

¹[When a bill of exchange has been noted or protested for non-acceptance or for better security] and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour."

"Payee."

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee."

"Holder."

8. The "holder" of a promissory [note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

"Holder in due course."

9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer,

or the payee or indorsee thereof, if payable, to or to the order of, a payee,

before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

"Payment in due course."

10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

Inland instrument.

11. A promissory note, bill of exchange or cheque drawn

¹ These words were substituted for the words "When acceptance is refused and the bill is protested for non-acceptance," by the Negotiable Instruments Act, 1885 (2 of 1885), s. 2, Genl. Acts, Vol. III.

(Chapter II.—Of Notes, Bills and Cheques.—Secs. 12-18.)

drawn or made in British India, and made payable in, or drawn upon any person resident in, British India, shall be deemed to be an inland instrument.

12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument. Foreign instrument.

13. A "negotiable instrument" means a promissory note, bill of exchange or cheque expressed to be payable to a specified person, or his order, or to the order of a specified person, or to the bearer thereof, or to a specified person or the bearer thereof. "Negotiable instrument."

14. When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated. Negotiation.

15. When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser." Indorsement.

16. If the indorser signs his name only, the indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full;" and the person so specified is called the "indorsee" of the instrument. Indorsement "in blank" and "in full."

17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly. "Indorsee." Ambiguous instruments.

18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid. Where amount is stated differently in figures and words.

19. A

* For an exception to s. 15 in the case of Government Securities, see the Indian Securities Act, 1880 (13 of 1880), s. 6, Genl. Act, Vol. III.

(Chapter II.—Of Notes, Bills and Cheques.—Secs. 19-23.)

Instruments payable on demand.

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

Inchoate stamped instruments.

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

"At sight."
"On presentment."
"After sight."

21. In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.

"Maturity."

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

Days of grace.

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

Calculating maturity of bill or note payable so many months after date or sight.

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which

corresponds

corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Illustrations.

(a) A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.

(b) A negotiable instrument, dated 30th August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

(c) A promissory note or bill of exchange, dated 31st August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

Calculating maturity of bill or note payable so many days after date or sight.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

When day of maturity is a holiday.

Explanation.—The expression "public holiday" includes Sundays, New Year's day, Christmas day: if either of such days falls on a Sunday, the next following Monday: Good Friday; and any other day declared by the Local Government, by notification in the Official Gazette, to be a public holiday.

CHAPTER III.

Negotiable Instruments. [ACF XXVI]

(Chapter III.—Parties to Notes, Bills and Cheques
—Secs. 26-29.)

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

Capacity to
make, &c.,
promissory
notes, &c.

26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Minor.

A minor may draw, indorse, deliver and negotiate such instrument so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

Agency.

27. Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorized agent acting in his name.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

Liability of
agent signing.

28. An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

Liability of
legal representative
signing.

29. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

30. The

*(Chapter III.—Parties to Notes, Bills and Cheques.
—Secs. 30-35.)*

30. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

Liability of drawer.

31. The drawee of a cheque having sufficient funds of the drawer in his hands, properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

Liability of drawee of cheque.

32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of the bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

Liability of maker of note and acceptor of bill.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Only drawee can be acceptor except in case of need or for honour.

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

Acceptance by several drawees not partners.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in

Liability of indorser.

case

(Chapter III.—Parties to Notes, Bills and Cheques.
—Secs. 36-39.)

case of dishonour by the drawee, acceptor or maker to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Every indorser after dishonour is liable as upon an instrument payable on demand.

Liability of prior parties to holder in due course.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Maker, drawer and acceptor principals.

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

Prior party a principal in respect of each subsequent party.

38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Illustration.

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

Suretyship.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

40. Where

*(Chapter III.—Parties to Notes, Bills and Cheques.
—Secs. 40-43.)*

40. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Discharge of
indorser's
liability.

Illustration.

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank:—

First indorsement, "B."

Second indorsement, "Peter Williams."

Third indorsement, "Wright & Co."

Fourth indorsement, "John Rozario."

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

Acceptor
bound
although
indorsement
forged.

42. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

Acceptance
of bill drawn
in fictitious
name.

43. A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Negotiable
instrument
made, etc.,
without
consider-
ation.

Exception I.

Negotiable Instruments. [ACT XXVI
(Chapter III.—Parties to Notes, Bills and Cheques.
—Secs. 44-45.)

Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II.—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

Partial
absence or
failure of
money-con-
sideration.

44. When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Explanation.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration.

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

Partial
failure of
consideration
not consist-
ing of
money.

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such

signer

(Chapter III.—Parties to Notes, Bills and Cheques.—
 Sec. 45A. Chapter IV.—Of Negotiation.—
 Sec. 46.)

signer is entitled to receive from him is proportionally reduced.

¹ [45 A. Where a bill of exchange has been lost before it is over-due, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again. Holder's right to duplicate of lost bill.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.]

CHAPTER IV. OF NEGOTIATION.

46. The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive. Delivery

As between parties standing in immediate relation delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorised by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

47. Subject

¹ E. 45 A was inserted by the Negotiable Instruments Act, 1895 (2 of 1895), s. 8, Genl. Acts, Vol. III.

(Chapter IV.—Of Negotiation.—Secs. 47-50.)

Negotiation
by delivery.

47. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception.—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustrations.

(a) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(b) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

Negotiation
by indorse-
ment.

48. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.

Conversion of
indorsement
in blank into
indorsement
in full.

49. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

Effect of
indorsement.

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive

(Chapter IV.—Of Negotiation.—Secs. 51-52.)

receive its contents for the indorser or for some other specified person.

Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer:—

- (a) "Pay the contents to C only."
- (b) "Pay C for my use."
- (c) "Pay C or order for the account of B."
- (d) "The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

- (e) "Pay C."
- (f) "Pay C value in account with the Oriental Bank."
- (g) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

51. Every sole maker, drawer, payee or indorsee, ^{Who may negotiate.} or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same.

Explanation.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

Illustration.

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon ^{indorser who excludes his own liability or makes it conditional.} depend

(Chapter IV.—Of Negotiation.—Secs. 47-50.)

Negotiation
by delivery.

47. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception.—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustrations.

(a) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(b) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

Negotiation
by indorse-
ment.

48. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.

Conversion of
indorsement
in blank into
indorsement
in full.

49. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

Effect of
indorsement.

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive

(Chapter IV.—Of Negotiation.—Secs. 51-52.)

receive its contents for the indorser or for some other specified person.

Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer:—

- (a) "Pay the contents to C only"
- (b) "Pay C for my use."
- (c) "Pay C or order for the account of B."
- (d) "The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

- (e) "Pay C."
- (f) "Pay C value in account with the Oriental Bank."
- (g) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

51. Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same. Who may negotiate.

Explanation.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

Illustration.

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend (indorser who excludes his own liability or makes it conditional.

(Chapter IV.—Of Negotiation.—Secs. 53-57.)

depend upon the happening of a specified event, although such event may never happen.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations.

(a) The indorser of a negotiable instrument signs his name adding the words—

“Without recourse.”

Upon this indorsement he incurs no liability.

(b) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement “without recourse,” he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

Holder deriving title from holder in due course. Instrument indorsed in blank.

53. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Conversion of indorsement in blank into indorsement in full.

55. If a negotiable instrument after having been indorsed in blank is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Indorsement for part of sum due.

56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but, where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

Legal representative cannot by delivery only negotiate

57. The legal representative of a deceased person cannot negotiate by delivery only a promissory note,
bill

bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

instrument indorsed by deceased.

58. When a negotiable instrument has been lost or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party, prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

Instrument obtained by unlawful means or for unlawful consideration.

59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor :

Instrument acquired after dishonour or when overdue.

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Accommodation note or bill.

Illustration.

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell

charge of the bill if it having been paid at retained the proceeds is subject to the same

objection as the drawer's title.

60. A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

Instrument negotiable till payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

Presentment
for accept-
ance.

61. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and, if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

[¹Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

Presentment
of promissory
note for sight

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can, after reasonable search, be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Drawee's
time for
deliberation.

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept it.

Presentment
for payment.

64. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor

¹ This paragraph was added by the Negotiable Instruments Act, 1883 (2 of 1883), s. 4, Genl. Acts, Vol. III.

acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

¹ [Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

Exception.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours. Hours for presentment.

66. A promissory note or bill of exchange made payable at a specified period after date or sight thereof, must be presented for payment at maturity. Presentment for payment of instrument payable after date or sight.

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment of such presentment has the same effect as non-payment of a note at maturity. Presentment for payment of promissory note payable by instalments

68. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place. Presentment for payment of instrument payable at specified place and not elsewhere.

69. A promissory note or bill of exchange, made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place. Instrument payable at specified place.

70. A promissory note or bill of exchange not made payable as mentioned in sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be. Presentment where no exclusive place specified.

71. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed Presentment when maker, &c., has no

¹ This paragraph was added by the Negotiable Instruments Act, 1885 (2 of 1885), s. 4, Genl. Acts, Vol. III.

(Chapter V.—Of Presentment.—Secs. 72-76.)

known place
of business
or residence.

fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

Presentment
of cheque
to charge
drawer.

72. ¹ [Subject to the provisions of section 84,] a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Presentment
of cheque to
charge any
other person.

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Presentment
of instrument
payable on
demand.

74. Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Presentment
by or to
agent repre-
sentative of
deceased or
assignee of
insolvent.

75. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

When
presentment
unnecessary.

76. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:—

(a) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or,

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or,

if the instrument not being payable at any specified place, he cannot after due search be found;

(b) as

¹ These words and figures were inserted by the Negotiable Instruments Act Amendment Act, 1897 (6 of 1897), s. 2, Genl. Acts, Vol. IV.

(Chapter V.--Of Presentment.—Sec. 77. Chapter VI.—Of Payment and Interest.—Secs. 78-80.)

(b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

(c) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment;

(d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

77. When a bill of exchange accepted payable at a specified bank, has been duly presented there for payment and dishonour, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

Liability of banker for negligently dealing with bill presented for payment.

CHAPTER VI.

OF PAYMENT AND INTEREST.

78. Subject to the provisions of section 82, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must in order to discharge the maker or acceptor, be made to the holder of the instrument.

To whom payment should be made.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the instrument of a suit to recover such . . .

Interest when rate specified.

80. When no rate of interest is specified on the instrument, interest on the . . .

Interest when no rate specified.

except

(Chapter VI.—Of Payment and Interest.—Sec. 81. Chapter VII.—Of Discharge from Liability on Notes, Bills and Cheques.—Sec. 82.)

except in cases provided for by the Code of Civil Procedure, section 532, be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Explanation.—When the party charged is the indorser of an instrument dishonoured by non-payment he is liable to pay interest only from the time that he receives notice of the dishonour.

Delivery of instrument on payment or indemnity in case of loss.

81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced to be indemnified against any further claim thereon against him.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

Discharge from liability—

by cancellation;

by release;

82. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

(a) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;

(b) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties

¹See now the Code of Civil Procedure, 1908 (Act 5 of 1909), Sch. I, Order XXXVII, rule 2, Genl. Acts, Vol. VI.

(Chapter VII.—Of Discharge from Liability on Notes, Bills and Cheques.—Secs. 83-84.)

parties deriving title under such holder after notice of such discharge ;

- (c) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

83. If the holder of a bill of exchange allows the drawee more than twenty-four hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

84. (1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than he would have been if such cheque had been paid.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of the cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.

Illustrations.

¹ This section was substituted by the Negotiable Instruments Act Amendment Act, 1897 (6 of 1897), s. 3, Genl. Acts, Vol. V.

the holder of a cheque
a time, and the drawer
he is discharged from

(Chapter VII.—Of Discharge from Liability on Notes, Bills and Cheques.—Secs. 85-86.)

Illustrations.

(a) A draws a cheque for Rs. 1,000, and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.

(b) A draws a cheque at Umballa on a bank in Calcutta. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

Cheque payable to order.

85. Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

Parties not consenting discharged by qualified or limited acceptance.

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Explanation.—An acceptance is qualified—

- (a) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated ;
- (b) where it undertakes the payment of part only of the sum ordered to be paid ;
- (c) where, no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere ; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere ;
- (d) where it undertakes the payment at a time other than that at which under the order it would be legally due,

87. Any

(Chapter VII.—Of Discharge from Liability on Notes, Bills and Cheques.—Secs. 87-90.)

87. Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties ;

Effect of material alteration,

and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

Alteration by indorsee.

The provisions of this section are subject to those of sections 20, 49, 56 and 125.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Acceptor or indorser bound notwithstanding previous alteration.

89. Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

Payment of instrument on which alteration is not apparent.

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon ; and such payment shall not be questioned by reason of the instrument having been altered or the cheque crossed.

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

Extinguishment of rights of action on bill in acceptor's hands.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

Dishonour
by non-
acceptance.

91. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

Dishonour
by non-
payment.

92. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

By and to
whom notice
should be
given.

93. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note or the drawee or acceptor of the dishonoured bill of exchange or cheque.

Mode in
which notice
may be
given.

94. Notice of dishonour may be given to a duly authorised agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment,

that

(Chapter VIII.—Of Notice of Dishonour.—Sects. 95-98.)

that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section 93.

Party receiving must transmit notice of dishonour.

96. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

Agent for presentment.

97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When party to whom notice given is dead.

98. No notice of dishonour is necessary—

(a) when it is dispensed with by the party entitled thereto;

When notice of dishonour is unnecessary.

(b) in order to charge the drawer when he has countermanded payment;

(c) when the party charged could not suffer damage for want of notice;

(d) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;

(e) to charge the drawers when the acceptor is also a drawer;

(f) in

(Chapter IX.—Of Noting and Protest.—Secs. 99-101.)

- (f) in the case of a promissory note which is not negotiable;
- (g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX.

OF NOTING AND PROTEST.

Noting.

99. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reasons, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

Protest.

100. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

Protest for better security.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Contents of protest.

101. A protest under section 100 must contain—

- (a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;

(b) the

(Chapter IX.—Of Noting and Protest.—Secs. 102-103.)

- (b) the name of the person for whom and against whom the instrument has been protested;
- (c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found;
- (d) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;
- (e) the subscription of the notary public making the protest;
- (f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

¹ [A notary public may make the demand mentioned in clause (c) of this section either in person or by his clerk or, where authorized by agreement or usage, by registered letter.]

102 When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest. Notice of protest.

103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment in the place specified for payment, unless paid before or at maturity. Protest for non-payment after dishonour by non-acceptance.

104. Foreign

¹ This paragraph was added by the Negotiable Instruments Act, 1885 (2 of 1885), s. 6, Genl. Acts, Vol. III.

(Chapter IX.—Of Noting and Protest.—Secs. 99-101.)

- (f) in the case of a promissory note which is not negotiable;
- (g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX.

OF NOTING AND PROTEST.

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99. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reasons, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

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When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Contents of protest.

101. A protest under section 100 must contain—

- (a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;

(b) the

(Chapter IX.—Of Noting and Protest.—Secs. 102-103.)

- (b) the name of the person for whom and against whom the instrument has been protested ;
- (c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public ; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found ;
- (d) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal ;
- (e) the subscription of the notary public making the protest ;
- (f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

¹ [A notary public may make the demand mentioned in clause (c) of this section either in person or by his clerk or, where authorized by agreement or usage, by registered letter.]

102. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions ; but the notice may be given by the notary public who makes the protest. Notice of protest.

103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment in the place specified for payment, unless paid before or at maturity. Protest for non-payment after dishonour by non-acceptance.

104. Foreign

¹ This paragraph was added by the Negotiable Instruments Act, 1885 (2 of 1885), s. 6, Genl. Acts, Vol. III.

(Chapter IX.—Of Noting and Protest.—Sec. 104.
Chapter X.—Of Reasonable time.—Secs. 105-107.)

Protest of foreign bills. 104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

When noting equivalent to protest. [104 A. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.]

CHAPTER X.

OF REASONABLE TIME.

Reasonable time. 105. In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

Reasonable time of giving notice of dishonour. 106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

Reasonable time for transmitting such notice. 107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits

(Chapter XI.—Of Acceptance and Payment for Honour and Reference in Case of Need.—Secs. 108-111.)

transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.¹

Acceptance for honour.

109. A person desiring to accept for honour must, ²[by writing on the bill under his hand] declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour.³

How acceptance for honour must be made.

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

Acceptance not specifying for whose honour it is made. Liability of acceptor for honour.

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But

¹Portion repealed by the Negotiable Instruments Act, 1885 (2 of 1885).

to annuity.

²These words were substituted for the words "in the presence of a

(Chapter XI.—Of Acceptance and Payment for Honour and Reference in Case of Need.—Secs. 112-116. Chapter XII.—Of Compensation.—Sec. 117).

But an acceptor for honour is not liable to the holder of the bill unless it is presented (or in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable), forwarded for presentment, not later than the day next after the day of its maturity.

When accept-
or for honour
may be
charged. 112. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

Payment for
honour 113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying¹ [or his agent in that behalf] has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

Right of
payer for
honour 114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

Drawee in
case of need. 115. Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon the bill is not dishonoured until it has been dishonoured by such drawee.

Acceptance
and payment
without pro-
test. 116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

CHAPTER XII.

OF COMPENSATION.

Rules as to
compensa-
tion.

117. The compensation payable in case of dis-
honour

¹ These words were inserted by the Negotiable Instruments Act, 1885 (2 of 1885), s. 9, Genl. Acts, Vol III.

· (Chapter XII.—Of Compensation.—Sec. 117.)

honour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee shall (except in cases provided for by the ¹Code of Civil Procedure, section 532) be determined by the following rules :—

- (a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it ;
- (b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places ;
- (c) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment ;
- (d) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places ;
- (e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

CHAPTER XIII.

¹ See now the Code of Civil Procedure 1908 (Act 5 of 1908), Sch. I, Order XXXVII, rule 2, Genl. Acts, Vol. VI.

(Chapter XIII.—Special Rules of Evidence.—Secs.
118-119.)

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

Presump-
tions as to
negotiable
instru-
ments—
of consider-
ation ;

118. Until the contrary is proved, the following
presumptions shall be made ;

(a) that every negotiable instrument was made or
drawn for consideration, and that every such
instrument, when it has been accepted,
indorsed, negotiated or transferred, was
accepted, indorsed, negotiated or transferred
for consideration ;

as to date ;

(b) that every negotiable instrument bearing a
date was made or drawn on such date ;

as to time of
acceptance ;

(c) that every accepted bill of exchange was
accepted within a reasonable time after its
date and before its maturity ;

as to time of
transfer ;

(d) that every transfer of a negotiable instrument
was made before its maturity ;

as to order
of indorse-
ment ;

(e) that the indorsements appearing upon a nego-
tiable instrument were made in the order
in which they appear thereon ;

as to stamp ;

(f) that a lost promissory note, bill of exchange
or cheque was duly stamped ;

that holder
is a holder in
due course.

(g) that the holder of a negotiable instrument is a
holder in due course : Provided that where
the instrument has been obtained from its
lawful owner, or from any person in lawful
custody thereof by means of an offence or
fraud, or has been obtained from the maker
or acceptor thereof by means of an offence
or fraud, or for unlawful consideration the
burthen of proving that the holder is a
holder in due course lies upon him.

Presumption
on proof of
protest.

119. In a suit upon an instrument which has
been dishonoured, the Court shall, on proof of the
protest, presume the fact of dishonour, unless and
until such fact is disproved.

120. No

(Chapter XIII.—*Special Rules of Evidence.*—Secs. 120-122. Chapter XIV.—*Of Crossed Cheques.*—Secs. 123-125.)

120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn. Estoppel against denying original validity of instrument.

121. No maker of a promissory note and no acceptor of a bill of exchange payable to, or to the order of, a specified person shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same. Estoppel against denying capacity of payee to indorse.

122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument. Estoppel against denying signature or capacity of prior party.

CHAPTER XIV.

OF CROSSED CHEQUES.

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally. Cheque crossed generally.

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker. Cheque crossed specially.

125. Where a cheque is uncrossed, the holder may cross it generally or specially. Crossing after issue.

Where a cheque is crossed generally, the holder may cross it specially.

Where

(Chapter XIV.—Of Crossed Cheques.—Secs. 126-130.)

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

Payment of
cheque
crossed
generally.

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Payment of
cheque
crossed
specially.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

Payment of
cheque cross-
ed specially
more than
once.

127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

Payment in
due course of
crossed
cheque.

128. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

Payment of
crossed
cheque out of
due course

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Cheque bear-
ing "not
negotiable."

130. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable

of

[Chapter XIV.—Of Crossed Cheques.—Sec. 131.
 Chapter XV.—Of Bills in Sets.—Secs. 132-133.
 Chapter XVI.—Of International Law.—Sec.
 134.)

of giving a better title to the cheque than that which the person from whom he took it had.

131. A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

Non-liability
of banker re-
ceiving pay-
ment of
cheque.

CHAPTER XV.

OF BILLS IN SETS.

132. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

Set of bills.

Exception.—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

133. As between holders in due course of different parts of the same set he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

Holder of
first acquired
part entitled
to all.

CHAPTER XVI.

OF INTERNATIONAL LAW.

134. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all

Law govern-
ing liability
of maker, ac-
ceptor or

(Chapter XVI.—Of International Law.—Secs. 135-137.)

indorser of
foreign
instrument.

all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

Illustration.

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is indorsed in British India, and is dishonoured. An action on the bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent. only; but, if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

law of place
of payment
governs
dishonour.

135. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Illustration.

A bill of exchange drawn and indorsed in British India, but indorsed in a foreign country, is governed by the law of the place where it is indorsed, and the notice of dishonour is to be given in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

instrument
made, etc.,
out of British
India, but in
accordance
with its law.

136. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in British India.

Presumption
as to foreign
law.

137. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

CHAPTER XVII.

CALCUTTA
SUPERINTENDENT GOVERNMENT PRINTING, INDIA
8, HASTINGS STREET

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

THE ADMINISTRATOR GENERAL'S ACT, 1874.

AS MODIFIED UP TO THE 1ST JULY, 1890.

CALCUTTA:
OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA.
1890.

Price Eleven Annas,

CALCUTTA:
GOVERNMENT OF INDIA CENTRAL PRINTING OFFICE,
8, HASTINGS STREET.

STATEMENT OF REPEALS AND AMENDMENTS.

REPEALED IN PART	I of 1879.
REPEALED IN PART AND AMENDED	IX of 1881.
AMENDED	II of 1890, ss. 10—15.

The following changes have been made in reprinting :—

- (1) repealed matter has been omitted, explanatory notes being inserted :
- (2) amendments made by later Acts have been inserted in their proper places, with explanatory footnotes :
- (3) references to repealed Acts have been altered as directed by the enactment which effects the repeal, explanatory footnotes being inserted :
- (4) the number and year of Acts referred to in the text have been noted in the inner margin, except where both appear in the text :
- (5) section-numbers occurring in the text have been printed in figures instead of in words :
- (6) lengthy sections have sometimes been divided into clauses and paragraphs :
- (7) in some instances marginal notes have been added, in others they have been shortened
- (8) the headings to the pages have been amplified :
- (9) some footnotes have been inserted for convenience of reference :
- (10) an Appendix has been added.

ARRANGEMENT OF SECTIONS.

PREAMBLE.

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PRELIMINARY.

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2. Repeal of Acts.
3. Interpretation-clause.

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5. Appointment, suspension and removal of Administrators General.
6. Qualification of future and continuance of existing Incumbents.
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8. Probates, &c, granted by Supreme Courts to Ecclesiastical Registrars to have same effect as if granted to Administrator General.
9. No Administrator General to be Ecclesiastical Registrar. Administrator General not to hold any other office without sanction of Government.
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11. Security to be given by Administrator General.
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13. Appointment of officiating Administrator General.

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25. Payments made by Administrator General prior to revocation.
26. Recall of Administrator General's administration, and grant of probate, &c., to executor or next of kin
Time within which application to revoke must be made
27. Costs of obtaining administration, &c., may, on revocation, be ordered to be paid to Administrator General out of assets.
28. Distribution of assets.
29. Letters to be granted to Administrator General by his name of office.
Authority given by such letters.
30. Grant of probate to Administrator General named as executor by virtue of his office.
31. Transfer by private executor or administrator of interest under probate or letters.
32. Appointment of Official Trustee as trustee of assets carried to separate accounts.
33. Vesting of estates, &c., in successor of Administrator General.

(b) Suits by and against the Administrator General.

34. Administrator General to sue and be sued in his name of office.
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SECTIONS.

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Right of executor or administrator against certificate-holder.
Right of creditor against assets in hands of certificate-holder.

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40. Administrator General not bound to take out administration on account of effects for which he has granted certificate.
41. Fee for certificate.
- 41A. Transfer of certain assets from British India to executor or administrator in country of domicile for distribution.
- (d) *Expenses of the Administrator General's Establishment.*
42. Administrator General to defray expenses of establishment.
- (e) *Accounts and Schedules.*
43. Administrator General to keep separate account for each estate.
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44. Administrator General to furnish half-yearly schedules.
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OF THE AUDIT OF THE ADMINISTRATOR GENERAL'S ACCOUNTS.

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46. Auditors to examine schedules and report to Government.
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48. Costs of preparing schedules, &c.
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How payable.
Commission retained to be deemed a distribution.
55. Commission

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55. *Commission of Administrator General of Bengal may be raised and again reduced.*
Commission of Administrators General of Madras and Bombay may be reduced and again raised.
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- 55A. *Commission on assets collected beyond Presidency.*
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57. *Power to make rules—*
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58. *Publication of new rules.*
59. *Power to decide when commission shall be deemed payable.*
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62. *Assets unclaimed for fifteen years to be transferred to Government.*
Proviso.
63. *Mode of proceeding by claimant to recover principal money so transferred.*
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65. *Act not to require administration of estates of soldiers, unless Administrator General authorized by Military Secretary or Committee of Adjustment.*
66. *Succession Act and Companies Act not to affect Administrator General.*
Saving of provisions of Presidency Police Acts as to petty estates.
67. *Compliance with requisitions for returns.*

PART VII.

DIVISION OF THE PRESIDENCY OF BENGAL INTO PROVINCES.

68. *Division of the Presidency of Bengal into Provinces.*

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DIVISION OF THE PRESIDENCY OF BENGAL INTO PROVINCES.

68. Division of ' Presidency of Bengal into Provinces.

ACT No. II OF 1874.*

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 10th February, 1874.)

An Act to consolidate and amend the law relating to the office and duties of Administrator General.

[As modified up to the 1st July, 1890.]

WHEREAS it is expedient to consolidate and amend the law relating to the office and duties of Administrator General; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

1. This Act may be called the Administrator General's Act, 1874: Short title.

It extends to the whole of British India and, so far as regards British subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty; Local extent.

And it shall come into force at once.

2. Act No. XXIV of 1867 (*to consolidate and amend the law relating to the office and duties of Administrator*) Commence-
ment.
Repeal of
Acts.

* Act II of 1874 has been declared in force in British Baluchistan—see

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Repeal of Acts.

* Act II of 1874 has been declared in force in British Baluchistan—see Regulation of 1890.

(Part I.—Preliminary.—Section 3.)

Administrator General) and Act No. XIX of 1869 (to facilitate administration to the estates of deceased British subjects in the Hyderabad Assigned Districts) and Act No. V of 1870 (so far as it relates to the Administrator General) are hereby repealed.

All things duly done under any of the enactments hereby repealed shall be considered as having been done under this Act.

Interpreta-
tion clause.

3. In this Act, unless there be something repugnant in the subject or context,—

“ Presidency
of Bengal.”

“ Presidency of Bengal^a.” includes—

- (a) the territories for the time being respectively under the governments of the Lieutenant-Governors of Bengal, the North-Western Provinces and the Punjab ;
- (b) the territories for the time being respectively under the administration of the Chief Commissioners of Oudh, the Central Provinces, Burma,^b Ajmere and Merwara, Assam and the Andaman and Nicobar Islands ;
- (c) such of the dominions of Princes and States aforesaid as the Governor General in Council may, by notification^c in the Gazette of India, from time to time direct^d :

“ Presidency
of Madras.”

“ Presidency of Madras ” includes—

- (a) the territories for the time being under the government of the Governor of Fort St. George in Council ;
- (b) such of the dominions aforesaid as the Governor General in Council may, by notification in the Gazette of India, from time to time direct^d ; -
- (c) Coorg ;
- (d) Mysore :

“ Presidency

^a For power to divide the “the Presidency of Bengal” into provinces, see s. 68, *infra*.

^b “Burma” was substituted for “British Burma” in s. 3 by Act II of 1890, s. 10.

^c For list of States notified under these clauses, see Appendix.

(Part I.—Preliminary.—Section 3.)

“ Presidency of Bombay ” means—

“ Presidency of Bombay.”

- (a) the territories for the time being under the government of the Governor of Bombay in Council and under the administration of the Chief Commissioner of British Baluchistan;
 (b) such of the dominions aforesaid as the Governor General in Council may, by notification in the Gazette of India, from time to time direct^b;

(c) the Hyderabad Assigned Districts :

“ Presidency-town ” means the town of Calcutta, Madras or Bombay, as the case may be :

“ Presidency-town.”

“ Government ” means the Governor General in Council, so far as the Act relates to the Presidency of Bengal ; the person for the time being administering the executive government of the Presidency of Fort St. George, so far as the Act relates to the Presidency of Madras ; and the person for the time being administering the executive government of the Presidency of Bombay, so far as the Act relates to the Presidency of Bombay :

“ Government.”

“ letters of administration ” shall include any letters of administration, whether general or limited, or with a will annexed, and letters *ad colligenda bona* :

“ Letters of Administration.”

“ next of kin ” includes a widower or widow of a deceased person, or any other person who, by law and according to the practice of the Courts, would be entitled to letters of administration in preference to a creditor or legatee of the deceased :

“ Next of kin.”

“ officer ” means a commissioned officer of Her Majesty’s Army, or of Her Majesty’s Indian Army :

“ Officer.”

“ soldier ” means a soldier of Her Majesty’s Army, or European soldier of Her Majesty’s Indian Army, including a warrant and a non-commissioned officer :

“ Soldier.”

“ assets ”

^a These words in s. 3 were added by Act II of 1890, s. 10.

^b For list of States notified under this clause, see Appendix.

(Part II.—Of the Office of Administrator General.
—Sections 4-8.)

“Assets.” “assets” includes immovable as well as moveable property.

PART II.

OF THE OFFICE OF ADMINISTRATOR GENERAL.

Designation
of the Ad-
ministrators
General in
the three
Presidencies.

4. In each of the Presidencies of Bengal, Madras and Bombay, there shall be an Administrator General.*

The said Administrators General shall be called respectively the Administrator General of Bengal, the Administrator General of Madras, and the Administrator General of Bombay.

Appoint-
ment, sus-
pension and
removal of
Administra-
tors General.

5. Such officers shall be appointed and may be suspended or removed by the authorities hereinafter mentioned, respectively; that is to say:—

the Administrator General of Bengal, by the Governor General in Council:

the Administrator General of Madras, by the Government of Fort St. George; and

the Administrator General of Bombay, by the Government of Bombay.

Qualification
of future and
continuance
of existing
incumbents.

6. Any person hereafter appointed to the office of Administrator General or officiating Administrator, General of any of the said Presidencies shall be a member of the Bar of England or Ireland, or of the Faculty of Advocates in Scotland; but any person now holding such office shall continue to hold the same, subject to the provisions contained in the other sections of this Act.

Administra-
tor General
not an officer
of High
Court.

7. The Administrator General shall not be deemed in that capacity to be an officer of any High Court.

Probates,
&c., granted
by Supreme
Courts to Ec-

8. All probates and letters of administration granted by any of the late Supreme Courts of Judicature to the Ecclesiastical Registrar of such Court in

* For power to divide the “Presidency of Bengal” into provinces and to appoint an Administrator General for each province, see s. 68, *infra*.

(Part II.—Of the Office of Administrator General.
—Sections 9-11.)

in virtue of his office shall have the same effect in all respects as to any act hereafter to be done or required to be done under this Act, as if they had been granted to the Administrator General.

ecclesiastical Registrars to have same effect as if granted to Administrator General.

9. No person now holding the office of Administrator General, or hereafter to be appointed to such office in any of the said Presidencies, shall hold the office of Ecclesiastical Registrar; nor, without the express sanction of Government, any other office together with that of Administrator General:

No Administrator General to be Ecclesiastical Registrar.

Provided that the Administrator General of the Presidency may be appointed Official Trustee under Act No. XVII of 1861* (*to constitute an office of Official Trustee*):

Administrator General not to hold any other office without sanction of Government.

Provided also that the Administrator General of Bengal may hold the office of Receiver of the High Court of Judicature at Fort Willam.

10. It is hereby declared to be an offence punishable in manner provided by section 168 of the Indian Penal Code,^b for any Administrator General to trade or traffic for his own benefit, or for the benefit of any other person, unless so far as appears to him to be expedient for the due management of the estates which come into his charge under the provisions of this Act, and for the sole benefit of the several persons entitled to the proceeds of such estates respectively; but this exception is not to be construed to alter the civil liabilities of the Administrator General as trustee of such estates.

Penalty for trading.

Exception.

11. Unless the Governor General in Council, or the Government, with the sanction of the Governor General in Council, otherwise orders, every Administrator General hereafter to be appointed shall give security to the Secretary of State for India, for the

Security to be given by Administrator General.

due

(Part II.—Of the Office of Administrator General.
—Sections 12-13.)

due execution of his office, for one lakh of rupees by his own bond, and for another lakh of rupees, or for separate sums amounting together to one lakh of rupees, by the deposit of Government securities, or by the joint and several bond or bonds of two or more sureties to be approved by Government, or partly by such deposit and partly by such bond or bonds :

Substitution
of security or
sureties.

Provided that every Administrator General may, with the consent of Government, substitute either of the said two last-mentioned kinds of security for another previously given for such last-mentioned lakh or any part of it :

and every Administrator General may, with the consent of Government, and shall from time to time when required by Government so to do, cause fresh sureties to be substituted for any of those previously bound, so far as the security relates to the due execution of his office for the time then to come.

No security
nor oath to be
required from
Administrator
General.

12. No Administrator General shall be required by any Court to enter into any administration-bond, or to give other security to the Court, on the grant of any letters of administration to him in virtue of his office.

No Administrator General shall be required to verify, otherwise than by his signature, any petition presented by him under the provisions of this Act, and, if the facts stated in any such petition are not within the Administrator General's own personal knowledge, the petition may be subscribed and verified by any person competent to make the verification.

Whoever makes a statement in any such petition which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

Appointment
of officiating
Administrator
General.

13. Whenever any person holding the office of Administrator General obtains leave of absence, the Government may appoint some person to officiate as

Administrator

(Part III.—Of the Rights, Powers and Duties of the Administrator General.—Sections 14-15.)

Administrator General, and such person, while so officiating, shall be subject to the same conditions and be bound by the same responsibilities as the Administrator General by any law for the time being in force, and he shall be deemed to be Administrator General for the time being under this Act, and shall be liable to give security under section 11 in like manner as if he had been appointed Administrator General.

PART III.

OF THE RIGHTS, POWERS AND DUTIES OF THE ADMINISTRATOR GENERAL.

(a) *Grants of Letters of Administration and Probate to the Administrator General.*

14. So far as regards the Administrator General of any of the Presidencies of Bengal, Madras and Bombay, the High Court at the Presidency-town shall be deemed to be a Court of competent jurisdiction within the meaning of sections 187 and 190 of the Indian Succession Act, 1865,* wheresoever within the Presidency the property to be comprised in the probate or letters of administration may be situate.

As regards Administrator General, High Court at Presidency-town to be deemed a Court of competent jurisdiction within meaning of Act X of 1865, sections 187 and 190 Administrator General entitled to letters of administration, unless granted to next of kin.

15. Any letters of administration, or letters *ad colligenda bona*, hereafter be^b granted by the High Court of Judicature at any Presidency-town, shall be granted to the Administrator General of the Presidency, unless they are granted to the next of kin of the deceased.

The Administrator General of the Presidency shall be deemed by all the Courts in the Presidency to have a right to letters of administration in preference to that of any person merely on the ground of his being

Administrator General entitled in preference to creditor, non-universal legatee or friend.

* See the revised edition of Act X of 1865, as modified up to the 1st July, 1890, published by the Legislative Department.

^b Sic: read to be.

(Part III.—Of the Rights, Powers and Duties of the Administrator General.—Section 16.)

a creditor, a legatee other than an universal legatee, or a friend of the deceased.

When Administrator General is to administer estates of persons other than Hindús, &c.

16. If any person, not being a Hindú, Muhammadan, Parsi^a or Buddhist, or a person exempted under the Indian Succession Act, 1865,^b section 332, from the operation of that Act, shall have died, whether within any of the said Presidencies or not, and whether before or after the passing of this Act, and shall have left assets exceeding at the date of the death or within one year thereafter the value of one thousand rupees within any of the said Presidencies,

and if no person to whom the Court would have jurisdiction to commit administration of such assets has, within one month after his death, applied in such Presidency for probate of his will, or for any letters of administration of his estate,

the Administrator General of the Presidency in which such assets are shall, within a reasonable time after he has had notice of the death of such person, and of his having left such assets as aforesaid, take such proceedings as may be necessary to obtain from the High Court at the Presidency letters of administration to the effects of such person, either generally or with a will annexed, as the case may require.

Whenever the Administrator General of the Presidency takes proceedings under this section, it shall be sufficient if the petition required by section 216 of the Indian Succession Act, 1865,^b states—

- (a) the time and place of the deceased's death, to the best of the petitioner's knowledge or belief,
- (b) that the deceased left some property within the Presidency as hereinbefore defined, and
- (c) the amount or value of assets which are likely to come into the petitioner's hands.

17. Whenever

^a The word "Parsi" in s. 16 was inserted by Act IX of 1891, s. 2.

^b See the revised edition of Act X of 1865, as modified up to the 1st July, 1890, published by the Legislative Department.

(Part III.—Of the Rights, Powers and Duties of the Administrator General.—Sections 17-18.)

17. Whenever any person, whether a Hindú, Muhammadan, Parsi* or Buddhist, or not, shall have died leaving assets within the local limits of the ordinary original civil jurisdiction of the High Court at the Presidency-town, it shall be lawful for the Court,

Power to direct Administrator General to apply for administration.

upon the application of any person interested in such assets, or in the due administration thereof, either as a creditor, legatee, next of kin or otherwise, or

upon the application of a friend of any minor so interested, or

upon the application of the Administrator General, if the applicant satisfies the Court that danger is to be apprehended of the misappropriation, deterioration or waste of such assets unless letters of administration of the effects of such person are granted,

to make an order, upon such terms as to indemnifying the Administrator General against costs and other expenses as the Court thinks fit, directing the Administrator General to apply for letters of administration of the effects of such person :

Provided that, in the case of an application being made under this section for letters of administration to the effects of a deceased Hindú, Muhammadan, Parsi* or Buddhist, or person exempted as aforesaid, the Court may refuse to grant letters of administration to any person, if it be satisfied that such grant is unnecessary for the protection of the assets; and in such case the Court shall make such order as to the costs of the application as it thinks just.

Administration to effects of Hindús, &c, when granted under this section.

Costs of unnecessary application.

18. Whenever any person, whether a Hindú, Muhammadan, Parsi* or Buddhist, or not, shall have died, whether before or after the passing of this Act, leaving assets within the local limits of the ordinary original civil jurisdiction of any of the said High Courts,

Power to enjoin Administrator General to collect and hold assets until right of succession or administration is ascertained.

and such Court is satisfied that danger is to be apprehended of the misappropriation, deterioration or waste

* The word " Parsi " in ss. 17 and 18 was inserted by Act IX of 1881, s. 2.

(Part III.—Of the Rights, Powers and Duties of the Administrator General.—Section 16.)

a creditor, a legatee other than an universal legatee, or a friend of the deceased.

When Administrator General is to administer estates of persons other than Hindús, &c.

16. If any person, not being a Hindú, Muhamadan, Parsi^a or Buddhist, or a person exempted under the Indian Succession Act, 1865,^b section 332, from the operation of that Act, shall have died, whether within any of the said Presidencies or not, and whether before or after the passing of this Act, and shall have left assets exceeding at the date of the death or within one year thereafter the value of one thousand rupees within any of the said Presidencies, X of 1865.

and if no person to whom the Court would have jurisdiction to commit administration of such assets has, within one month after his death, applied in such Presidency for probate of his will, or for any letters of administration of his estate,

the Administrator General of the Presidency in which such assets are shall, within a reasonable time after he has had notice of the death of such person, and of his having left such assets as aforesaid, take such proceedings as may be necessary to obtain from the High Court at the Presidency-town letters of administration to the effects of such person, either generally or with a will annexed, as the case may require.

Whenever the Administrator General of the Presidency takes proceedings under this section, it shall be sufficient if the petition required by section 246 of the Indian Succession Act, 1865,^b states— X of 1865.

- (a) the time and place of the deceased's death, to the best of the petitioner's knowledge or belief,
- (b) that the deceased left some property within the Presidency as hereinbefore defined, and
- (c) the amount or value of assets which are likely to come into the petitioner's hands.

17. Whenever

^a The word "Parsi" in s. 16 was inserted by Act IX of 1881, s. 2.

^b See the revised edition of Act X of 1865, as modified up to the 1st July, 1899, published by the Legislative Department.

(Part III.—Of the Rights, Powers and Duties of the Administrator General.—Sections 20-22.)

security as is required of him by law or by the practice of the Court,

of Costs of proceedings taken by Administrator General to be paid out of estate.

Ad

tak

the testamentary or intestate expenses thereof.

20. If no person appears according to the practice of the Court and entitles himself to probate of a will, or to a grant of letters of administration as next of kin of the deceased,

or if the person who entitles himself to a grant of administration neglects to give such security as may be required of him by law or according to the practice of the Court,

If no executor or next of kin appear or give necessary security, administration to be granted to Administrator General.

the Court shall grant letters of administration to the Administrator General.

21. The Administrator General shall, when duly authorized or required so to do by the Military Secretary to Government, secure and distribute the assets of the estate and effects of any officer, soldier or other person subject to any Articles of War, in all cases in which such estate and effects do not exceed in the whole five hundred rupees, charging the estate with a commission of three *per centum* only.

Administrator General in certain cases to secure and distribute the effects of soldiers.

It shall not be necessary for the Administrator General to take out letters of administration in cases referred to in this section : but he shall have the same powers with regard to all such assets as he would have had if he had taken out such letters.

Proviso.

22. When the Administrator General applies for letters of administration to the effects of any officer, soldier or other person subject to the Articles of War, the Court may grant to him letters of administration limited to the purpose of dealing with such effects in accordance with the provisions of the Regimental Debts Act, 1863,* or any other law for the time being in

Power to grant Administrator General letters limited to purpose of dealing with assets in

* Printed in the "Collection of Statutes relating to India," Ed. 1881, Vol. II, p 770.

(Part III.—Of the Rights, Powers and Duties of the Administrator General.—Section 19.)

waste of such property, before it can be ascertained who may be legally entitled to the succession to such property, or whether the Administrator General is entitled to letters of administration to such deceased person,

the Court may authorize and enjoin the Administrator General to collect and take possession of such property, and to hold or deposit or invest the same according to the orders and directions of the Court, and in default of any such orders or directions according to the provisions of this Act so far as the same are applicable to such property ;

Rate of
commission
payable in
such case.

and the Administrator General shall be entitled to a commission of one *per centum* upon the amount of all moveable assets collected or received by him in pursuance of such order, and also to reimburse himself for all payments made by him in respect of the assets which a private administrator of such assets might lawfully have made ;

and, in case letters of administration of any such property are afterwards granted to the Administrator General, the said commission of one *per centum* shall be deemed a part payment of the commission payable to the Administrator General under the letters of administration.

Any order of Court made under the provisions of this section shall entitle the Administrator General to collect and to take possession of such property, and, if necessary, to maintain a suit for the recovery thereof.

Grant of
probate to
executor
appearing in
the course of
proceedings
taken by
Administra-
tor General.

19. If in the course of proceedings to obtain letters of administration under the provisions of section 16 or section 17,

any executor appointed by a will of the deceased appears according to the practice of the Court and proves the will and accepts the office of executor,

or if any person appears according to such practice and makes out his claim to letters of administration as next of kin of the deceased, and gives such

security

(Part III.—Of the Rights, Powers and Duties of the Administrator General.—Sections 20-22.)

security as is required of him by law or by the practice of the Court,

of : letters
Ad : to the
taken by him, to be paid out of the estate as part of the testamentary or intestate expenses thereof. Costs of proceedings taken by Administrator General to be paid out of estate.

20. If no person appears according to the practice of the Court and entitles himself to probate of a will, or to a grant of letters of administration as next of kin of the deceased, If no executor or next of kin appear or give necessary security, administration to be granted to Administrator General.

or if the person who entitles himself to a grant of administration neglects to give such security as may be required of him by law or according to the practice of the Court,

the Court shall grant letters of administration to the Administrator General.

21. The Administrator General shall, when duly authorized or required so to do by the Military Secretary to Government, secure and distribute the assets of the estate and effects of any officer, soldier or other person subject to any Articles of War, in all cases in which such estate and effects do not exceed in the whole five hundred rupees, charging the estate with a commission of three *per centum* only. Administrator General in certain cases to secure and distribute the effects of soldiers.

It shall not be necessary for the Administrator General to take out letters of administration in cases referred to in this section : but he shall have the same powers with regard to all such assets as he would have had if he had taken out such letters. Proviso.

22. When the Administrator General applies for letters of administration to the effects of any officer, soldier or other person subject to the Articles of War, the Court may grant to him letters of administration limited to the purpose of dealing with such effects in accordance with the provisions of the Regimental Power to grant Administrator General letters limited to purpose of dealing with assets in
Vict., Debts Act, 1863,* or any other law for the time being in

* Printed in the "Collection of Statutes relating to India," Ed. 1881, Vol. II, p. 770.

(Part III.—Of the Rights, Powers and Duties of the Administrator General.—Sections 23-24.)

accordance with Regimental Debts Act.

in force relating to the payment of regimental debts and the distribution of the effects of officers dying on service.

Administrator General not precluded from applying for letters within one month after death.

23. Nothing in this Act is intended to preclude the Administrator General from applying to the Court for letters of administration in any case within the period of one month from the death of the deceased.

Effect of probate or letters granted to Administrator General.

*23A. Probate or letters of administration granted by the High Court at Calcutta, Madras or Bombay to the Administrator General of the Presidency of Bengal, Madras or Bombay, as the case may be, shall have effect over all the property and estate, moveable or immoveable, of the deceased throughout such Presidency,

and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property, to such Administrator General :

Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout either or both of the other Presidencies.

Whenever a grant of probate or letters of administration is made by a High Court to the Administrator General, with such effect as last aforesaid, the Registrar of such Court shall send to each of the other two High Courts a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same.

After revocation, letters granted to Administrator General to be deemed

24. If any letters of administration granted to the Administrator General under the provisions of this Act be revoked or recalled, the same shall, so far as regards the Administrator General and all persons acting

* S. 23A was inserted by Act IX of 1891, s. 3.

(Part III.—Of the Rights, Powers and Duties of the Administrator General.—Sections 25-26.)

acting under his authority in pursuance thereof, be deemed to have been only voidable, except as to any act done by any such Administrator General or other person as aforesaid, after notice of a will or of any other fact which would render such letters void :

as to him to have been voidable only.
Exception.

Provided that no notice of a will or of any other fact which would render any such letters void shall affect the Administrator General or any person acting under his authority in pursuance of such letters, unless, within the period of one month from the time of giving such notice, proceedings be commenced to prove the will, or to cause the letters to be revoked, nor unless such proceedings be prosecuted without unreasonable delay.

Proviso.

25. If any letters of administration granted under this Act be revoked upon the production and proof of a will, all payments made or acts done by or under the authority of the Administrator General in pursuance of such letters of administration prior to the revocation thereof, which would have been valid under any letters of administration lawfully granted to him with such will annexed, shall be deemed valid notwithstanding such revocation.

Payments made by Administrator General prior to revocation

26. If an executor or next of kin of the deceased, who has not been personally served with a citation or who has not had notice thereof in time to appear pursuant thereto, establish to the satisfaction of the Court a claim to probate of a will or to letters of administration in preference to the Administrator General, any letters of administration granted by virtue of this Act to the Administrator General may be recalled and revoked, and probate may be granted to such executor, or letters of administration granted to such other person as aforesaid :

Recall of Administrator General's administration, and grant of probate, &c., to executor or next of kin.

Provided that no letters of administration granted to the Administrator General shall be revoked or recalled for the cause aforesaid, except in cases in which a will or codicil of the deceased is proved in

Time within which application to revoke must be made.

(Part III.—Of the Rights, Powers and Duties of the Administrator General.—Sections 32-33.)

in the local Gazette, transfer all estates, effects and interests vested in him by virtue of such probate or letters to the Administrator General by his name of office ;

and thereupon the transferor shall be exempt from all liability as such executor or administrator, as the case may be, for any act or omission in respect of the said property after the date of the said transfer :

and the Administrator General for the time being shall have the rights and be subject to the liabilities which he would have had, and to which he would have been subject, if the probate or letters of administration, as the case may be, had been granted to him by his name of office at the date aforesaid.

Nothing herein contained shall be taken to exempt any such transferor from liability for acts and omissions in respect of the said property prior to the transfer.

Appointment
of Official
Trustee as
trustee of as-
sets carried
to separate
accounts.

32. Whenever the Administrator General carries over assets to separate accounts in his books, he shall notify the fact in the local official Gazette ; and he may, with the consent of the Official Trustee, and subject to such rules as the Governor General in Council may from time to time prescribe in this behalf, appoint the Official Trustee to be the trustee of such assets ; and upon such appointment such assets shall vest in the Official Trustee and his successors in office, and be held by him and them upon the same trusts as the same assets were held immediately before such appointment. And for the purposes of Act No. XVII of 1861* such assets shall be deemed to have been vested in the Official Trustee under section 10 of that Act.

Vesting of
estates, &c.,
in successors
of Adminis-
trator Gene-
ral.

33. All estates, effects and interests which, at the time of the death, resignation or removal from office of any Administrator General, are vested in him by virtue of such letters of administration, probates or transfers

* See the revised edition of Act XVII of 1861 as modified up to the 1st July, 1890, published by the Legislative Department.

(Part III.—Of the Rights, Powers and Duties of the
Administrator General.—Sections 34-35.)

transfers as aforesaid, shall, upon every such death, resignation or removal, cease to be vested in him, and shall vest in his successor in office immediately upon his appointment thereto.

All books, papers and documents kept by such Administrator General by virtue of his office or as such executor or transferee as aforesaid shall be transferred to and vested in his successor in office.

(b) *Suits by and against the Administrator General.*

34. All suits and other proceedings commenced by or against any Administrator General in his representative character may be brought by or against him by his name of office,

Administrator General to sue and be sued in his name of office.

and no suit or other proceeding heretofore or hereafter commenced by or against any person as Administrator General, either alone or jointly with any other person, shall abate by reason of the death, resignation or removal from office of any such Administrator General; but the same may, by order of the Court, and upon such terms as to the service of notices or otherwise as the Court may direct, be continued by or against his successor immediately upon his appointment, in the same manner as if no such death, resignation or removal had occurred:

Suit not to abate by death, &c.

Provided that nothing hereinbefore contained shall render any such successor personally liable for any costs incurred prior to the order for continuing the suit against him.

Proviso as to costs.

35. If any suit be brought by a creditor against any Administrator General in his representative character, the plaintiff shall be liable to pay the costs of the suit down to and including the decree, unless upon proof by affidavit or otherwise that not less than one month previous to the institution of the suit he had applied in writing to the Administrator General, stating the amount and other particulars of the claim, and supporting the same by such evidence as, under

Creditors' suits against Administrator General.

(Part III.—Of the Rights, Powers and Duties of the Administrator General.—Sections 32-33.)

in the local Gazette, transfer all estates, effects and interests vested in him by virtue of such probate or letters to the Administrator General by his name of office ;

and thereupon the transferor shall be exempt from all liability as such executor or administrator, as the case may be, for any act or omission in respect of the said property after the date of the said transfer :

and the Administrator General for the time being shall have the rights and be subject to the liabilities which he would have had, and to which he would have been subject, if the probate or letters of administration, as the case may be, had been granted to him by his name of office at the date aforesaid.

Nothing herein contained shall be taken to exempt any such transferor from liability for acts and omissions in respect of the said property prior to the transfer.

Appointment
of Official
Trustee as
trustee of as-
sets carried
to separate
accounts.

32. Whenever the Administrator General carries over assets to separate accounts in his books, he shall notify the fact in the local official Gazette ; and he may, with the consent of the Official Trustee, and subject to such rules as the Governor General in Council may from time to time prescribe in this behalf, appoint the Official Trustee to be the trustee of such assets ; and upon such appointment such assets shall vest in the Official Trustee and his successors in office, and be held by him and them upon the same trusts as the same assets were held immediately before such appointment. And for the purposes of Act No. XVII of 1864^a such assets shall be deemed to have been vested in the Official Trustee under section 10 of that Act.

Vesting of
estates, &c.,
in successor
of Adminis-
trator Gene-
ral.

33. All estates, effects and interests which, at the time of the death, resignation or removal from office of any Administrator General, are vested in him by virtue of such letters of administration, probates or transfers

^a See the revised edition of Act XVII of 1864 as modified up to the 1st July, 1890, published by the Legislative Department.

(Part III.—Of the Rights, Powers and Duties of the Administrator General.—Sections 34-35.)

transfers as aforesaid, shall, upon every such death, resignation or removal, cease to be vested in him, and shall vest in his successor in office immediately upon his appointment thereto.

All books, papers and documents kept by such Administrator General by virtue of his office or as such executor or transferee as aforesaid shall be transferred to and vested in his successor in office.

(b) *Suits by and against the Administrator General.*

34. All suits and other proceedings commenced by or against any Administrator General in his representative character may be brought by or against him by his name of office,

Administrator General to sue and be sued in his name of office.

and no suit or other proceeding heretofore or hereafter commenced by or against any person as Administrator General, either alone or jointly with any other person, shall abate by reason of the death, resignation or removal from office of any such Administrator General; but the same may, by order of the Court, and upon such terms as to the service of notices or otherwise as the Court may direct, be continued by or against his successor immediately upon his appointment, in the same manner as if no such death, resignation or removal had occurred:

Suit not to abate by death, &c.

Provided that nothing hereinbefore contained shall render any such successor personally liable for any costs incurred prior to the order for continuing the suit against him.

Proviso as to costs.

35. If any suit be brought by a creditor against any Administrator General in his representative character, the plaintiff shall be liable to pay the costs of the suit down to and including the decree, unless upon proof by affidavit or otherwise that not less than one month previous to the institution of the suit he had applied in writing to the Administrator General, stating the amount and other particulars of the claim, and supporting the same by such evidence as, under

Creditors' suits against Administrator General.

(Part III.—Of the Rights, Powers and Duties of the Administrator General.—Section 36.)

the circumstances of the case, the Administrator General was reasonably entitled to require, and that the Administrator General had refused or neglected to register the claim according to the practice of his office.

If in any such suit judgment is pronounced in favour of the plaintiff, he shall, nevertheless, be only entitled to payment out of the assets of the deceased equally and rateably with the other creditors.

(c) *Grant of Certificates by the Administrator General.*

In what case Administrator General may grant certificate.

36. Whenever any person* shall have died, whether within any of the said Presidencies or not, whether before or after the passing of this Act, and whether testate or intestate, and shall have left assets (whether moveable or immoveable, or both) within any of the said Presidencies, and the Administrator General of such Presidency is satisfied that such assets do not exceed in the whole one thousand rupees in value,

he may, after the lapse of one month from the death if he thinks fit, or before the lapse of the said month if he is requested so to do by writing under the hand of the executor or the widow or other person entitled to administer the effects of the deceased, grant to any person, claiming otherwise than as a creditor to be entitled to a share of such assets, certificates under his hand entitling the claimant to receive the property therein mentioned, belonging to the estate of the deceased, to a value not exceeding in the whole one thousand rupees:

No certificate where probate or administration granted or for money in Government Savings Bank.

Provided that no certificate shall be granted under this section where probate of the deceased's will or letters of administration of his effects has or have been granted, or in respect of any sum of money deposited in a Government Savings Bank.

37. If,

* Certain words of s 30, which were repealed by Act IX of 1881, s. 5, have been omitted.

(Part III.—Of the Rights, Powers and Duties of the Administrator General.—Sections 37-38.)

37. *If, in cases falling within section 36, no person claiming otherwise than as a creditor to be entitled to a share of the effects of the deceased obtains, within three months, a certificate from the Administrator General under the same section, or letters of administration to the estate and effects of the deceased, and such deceased was not a Hindú, Muhammadan, Parsi or Buddhist, or exempted under the Indian Succession Act, 1865,^b section 332, from the operation of that Act, the Administrator General may administer the estate and effects without letters of administration, in the same manner as if such letters had been granted to him ;*

Grant of certificate to creditors.

and if he neglect or refuse to take upon himself the administration of the estate and effects, he shall, upon the application of a creditor and upon being satisfied of his title, grant a certificate in the same manner as if such creditor were entitled to a share of the effects of the deceased,

and such certificate shall have the same effect as a certificate granted under the provisions of the same section, and shall be subject to all the provisions of this Act which are applicable to such certificate :

Provided that the Administrator General may, before granting such certificate, if he think fit, require the creditor to give reasonable security for the due administration of the estate and effects of the deceased.

Provided.

38. The Administrator General shall be bound to grant any certificate to a creditor, if he be satisfied of the value of the assets of the deceased, either by the oath

Administrator General not bound to grant certificate unless satisfied of claimant's title, &c.

* * This first paragraph of s. 37 was substituted for the original paragraph by Act II of 1890, s. 11 (I).

of Act V of 1865 as modified up to the 1st

the original words by

Act IX of 1804, s. 10.

(Part III.—Of the Rights, Powers and Duties of the Administrator General.—Sections 39-41A.)

or affirmation of the claimant,* or by such other evidence as he requires.

Copy of certificate with receipt annexed, when signed by certificate-holder, to be a discharge.

39. A copy of any such certificate with a receipt annexed shall, when such copy and receipt are signed by the person to whom the certificate has been granted, be a full discharge for payment or delivery to him of the money or security for money therein mentioned, to the person paying or delivering the same :

Right of executor or administrator against certificate-holder.

but nothing in this Act shall preclude any executor or administrator of the deceased from recovering, from the person receiving the same, the amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration.

Right of creditor against assets in hands of certificate-holder.

And any creditor or claimant against the estate of the deceased shall be at liberty to recover his debt or claim out of the assets received by such person and remaining in his hands unadministered, in the same manner and to the same extent as if such person had obtained letters of administration to the estate of the deceased.

Administrator General not bound to take out administration on account of effects for which he has granted certificate.

40. The Administrator General shall not be bound to take out letters of administration to the estate of any deceased person on account of the effects in respect of which he grants any such certificate, but he may do so if he discover any fraud or misrepresentation made to him, or that the value of the estate exceeded one thousand rupees.

Fee for certificate.

41. For every such certificate the Administrator General shall be entitled to charge a fee calculated after the rate of three rupees in the hundred on the amount mentioned in the certificate.

Transfer of certain assets from British

^b41A. Where a person not having his domicile in British India has died leaving assets both in British India

* Certain words of s. 33, which were repealed by Act IX of 1881, s. 6, have been omitted.

^b S. 41A was inserted by Act II of 1890, s. 12.

(Part III.—Of the Rights, Powers and Duties of the Administrator General.—Sections 42-43.)

India and in the country in which he had his domicile at the time of his death, and proceedings for the administration of his estate with respect to assets in British India have been taken under section 36 or section 37, and there has been a grant of administration in the country of domicile with respect to the assets in that country,

India to executor or administrator in country of domicile for distribution.

the holder of the certificate granted under section 36 or section 37, or the Administrator General, as the case may be, after having given such notices as the High Court may by any general rule to be made from time to time prescribe, for creditors and others to send in to him their claims against the estate of the deceased, and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

(d) Expenses of the Administrator General's Establishment.

42. The Administrator General shall defray all the expenses of the establishment necessary for his office, and all other charges to which the said office is subject, except those for which express provision is made by this Act.

Administrator General to defray expenses of establishment.

(e) Accounts and Schedules.

43. The Administrator General of each of the said Presidencies shall enter into books, to be kept by him for that purpose, separate and distinct accounts of each estate, and of all such sums of money, bonds and other securities for money, goods, effects and things as come to his hands, or to the hands of any person employed by him or in trust for him under

Administrator General to keep separate account for each estate.

(Part III.—Of the Rights, Powers and Duties of the Administrator General.—Sections 39-41A.)

or affirmation of the claimant,* or by such other evidence as he requires.

Copy of certificate with receipt annexed, when signed by certificate-holder, to be a discharge.

39. A copy of any such certificate with a receipt annexed shall, when such copy and receipt are signed by the person to whom the certificate has been granted, be a full discharge for payment or delivery to him of the money or security for money therein mentioned, to the person paying or delivering the same :

Right of executor or administrator against certificate-holder.

but nothing in this Act shall preclude any executor or administrator of the deceased from recovering, from the person receiving the same, the amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration.

Right of creditor against assets in hands of certificate-holder.

And any creditor or claimant against the estate of the deceased shall be at liberty to recover his debt or claim out of the assets received by such person and remaining in his hands unadministered, in the same manner and to the same extent as if such person had obtained letters of administration to the estate of the deceased.

Administrator General not bound to take out administration on account of effects for which he has granted certificates.

40. The Administrator General shall not be bound to take out letters of administration to the estate of any deceased person on account of the effects in respect of which he grants any such certificate, but he may do so if he discover any fraud or misrepresentation made to him, or that the value of the estate exceeded one thousand rupees.

Fee for certificate.

41. For every such certificate the Administrator General shall be entitled to charge a fee calculated after the rate of three rupees in the hundred on the amount mentioned in the certificate.

Transfer of certain assets from British

^b41A. Where a person not having his domicile in British India has died leaving assets both in British India

* Certain words of s. 38, which were repealed by Act IX of 1891, s. 6, have been omitted

^b S. 41A was inserted by Act II of 1890, s. 12.

(Part III.—Of the Rights, Powers and Duties of the Administrator General.—Sections 42-43.)

India and in the country in which he had his domicile at the time of his death, and proceedings for the administration of his estate with respect to assets in British India have been taken under section 36 or section 37, and there has been a grant of administration in the country of domicile with respect to the assets in that country,

India to executor or administrator in country of domicile for distribution.

the holder of the certificate granted under section 36 or section 37, or the Administrator General, as the case may be, after having given such notices as the High Court may by any general rule to be made from time to time prescribe, for creditors and others to send in to him their claims against the estate of the deceased, and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

(d) Expenses of the Administrator General's Establishment.

42. The Administrator General shall defray all the expenses of the establishment necessary for his office, and all other charges to which the said office is subject, except those for which express provision is made by this Act.

Administrator General to defray expenses of establishment.

(e) Accounts and Schedules.

43. The Administrator General of each of the said Presidencies shall enter into books, to be kept by him for that purpose, separate and distinct accounts of each estate, and of all such sums of money, bonds and other securities for money, goods, effects and things as come to his hands, or to the hands of any person employed by him or in trust for him under

Administrator General to keep separate account for each estate.

(Part III.—Of the Rights, Powers and Duties of the Administrator General.—Section 44.)

this Act; and likewise of all payments made by him on account of such estate, and of all debts due by or to the same, specifying the dates of such receipts and payments respectively.

Accounts to be open to inspection on payment of fee.

Such books shall be kept in the Administrator General's office, and shall be open for the inspection of all such persons, practitioners in the said Courts and others, as may have occasion to inspect the same, at office hours, paying only such reasonable fee for the time being fixed by the Government and published in the official Gazette of the Presidency to which the same may relate.

Administrator General to furnish half-yearly schedules.

44. The Administrator General of each of the said Presidencies shall twice in every year, that is to say, on or before the first day of April, and on or before the first day of October, or on such other days as the Government, by any rules or orders to be published as aforesaid, may direct, exhibit and deliver, in the High Court at Calcutta, Madras or Bombay, as the case may be,—

- (a) a schedule showing the gross amount of all sums of money received or paid by him on account of each estate in his charge, and the balances, during the period of six months ending severally on the thirty-first day of December and thirtieth day of June next before the day of delivering such schedule,
- (b) a list of all bonds or other securities received on account of each of the said estates during the same period,
- (c) a schedule of all administrations whereof the final balances have been paid over to the persons entitled to the same, during the same period, specifying the amount of such balances and the persons to whom paid.

Schedules to be filed and published.

Such schedules shall be filed of record in such High Court, and shall, within fourteen days afterwards,

(Part IV.—Of the Audit of the Administrator General's Accounts.—Sections 45-46.)

wards, be published in the official Gazette of the Presidency by the Administrator General;

and copies thereof in triplicate shall be delivered by such Administrator General to the Government, and shall be sent by such Government to the Secretary of State for India, in order that such Secretary may, if he think fit, order the same to be deposited at the India Office for public inspection, and cause notices to be published in the London Gazette and other leading newspapers that such schedules are open to inspection there, or make such other orders respecting the same as he thinks fit.

Copies of
schedules.

PART IV.

OF THE AUDIT OF THE ADMINISTRATOR GENERAL'S ACCOUNTS.

45. The Government shall from time to time appoint auditors to examine the accounts of the Administrator General at the times of the delivery of the said schedules, and also at any other time when the Government thinks fit.

Government
to appoint
auditors.

46. The auditors shall examine the schedules and accounts, and report to the Government—

Auditors to
examine
schedules and
report to
Government.

- (a) whether they contain a full and true account of everything which ought to be inserted therein,
- (b) whether the books which by this Act, or by any such general rules and orders as hereinafter mentioned, are directed to be kept by the Administrator General, have been duly and regularly kept, and
- (c) whether the assets and securities have been duly kept and invested and deposited in the manner prescribed by this Act, or by any such rules and orders to be made as aforesaid.

47. Every

(Part III.—Of the Rights, Powers and Duties of the Administrator General.—Section 44.)

this Act; and likewise of all payments made by him on account of such estate, and of all debts due by or to the same, specifying the dates of such receipts and payments respectively.

Accounts to be open to inspection on payment of fee.

Such books shall be kept in the Administrator General's office, and shall be open for the inspection of all such persons, practitioners in the said Courts and others, as may have occasion to inspect the same, at office hours, paying only such reasonable fee for the time being fixed by the Government and published in the official Gazette of the Presidency to which the same may relate.

Administrator General to furnish half-yearly schedules.

44. The Administrator General of each of the said Presidencies shall twice in every year, that is to say, on or before the first day of April, and on or before the first day of October, or on such other days as the Government, by any rules or orders to be published as aforesaid, may direct, exhibit and deliver, in the High Court at Calcutta, Madras or Bombay, as the case may be,—

- (a) a schedule showing the gross amount of all sums of money received or paid by him on account of each estate in his charge, and the balances, during the period of six months ending severally on the thirty-first day of December and thirtieth day of June next before the day of delivering such schedule,
- (b) a list of all bonds or other securities received on account of each of the said estates during the same period,
- (c) a schedule of all administrations whereof the final balances have been paid over to the persons entitled to the same, during the same period, specifying the amount of such balances and the persons to whom paid.

Schedules to be filed and published.

Such schedules shall be filed of record in such High Court, and shall, within fourteen days afterwards,

wards, be published in the official Gazette of the Presidency by the Administrator General;

and copies thereof in triplicate shall be delivered by such Administrator General to the Government, and shall be sent by such Government to the Secretary of State for India, in order that such Secretary may, if he think fit, order the same to be deposited at the India Office for public inspection, and cause notices to be published in the London Gazette and other leading newspapers that such schedules are open to inspection there, or make such other orders respecting the same as he thinks fit.

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- (a) whether they contain a full and true account of everything which ought to be inserted therein,
- (b) whether the books which by this Act, or by any such general rules and orders as hereinafter mentioned, are directed to be kept by the Administrator General, have been duly and regularly kept, and
- (c) whether the assets and securities have been duly kept and invested and deposited in the manner prescribed by this Act, or by any such rules and orders to be made as aforesaid.

47. Every

(Part IV.—Of the Audit of the Administrator General's Accounts.—Sections 47-49.)

Auditors to
summon
witnesses
and to call
for books, &c.

47. Every auditor shall have power to summon as well the Administrator General, as any other person whose presence he thinks necessary, to attend him from time to time; and to examine the Administrator General or other person if he thinks fit, on oath or affirmation to be by him administered; and to call for all books, papers, vouchers and documents which appear to him to be necessary for the purposes of the said reference.

If the Administrator General or other person when summoned refuses, or, without reasonable cause, neglects to attend or to produce any book, paper, voucher or document so required, or attends and refuses to be sworn or make an affirmation, or refuses to be examined, the auditors shall certify such neglect or refusal in writing to the High Court at the Presidency town;

Penalty for
non-attend-
ance.

and every person so refusing or neglecting shall thereupon be punishable in like manner as if such refusal or neglect had been in contempt of the said High Court.

Costs of
preparing
schedules,
&c.

48. The costs and expenses of preparing and publishing the said schedules and copies thereof, and of every such reference and examination as aforesaid, shall be defrayed by all the estates to which such schedules or accounts relate.

Such costs and expenses, and the portion thereof to be contributed by each of the said estates, shall be ascertained and settled by the auditors, subject to the approval of the Government, and shall be paid out of the said estates accordingly by the Administrator General.

Special
report to
Government
if accounts
appear
incorrect.

49. If upon any such reference and examination the auditors see reason to believe that the said schedules do not contain a true and correct account of the matters therein contained or which ought to be therein contained, or that the assets have not been duly kept and invested or deposited in the manner directed

(Part IV.—Of the Audit of the Administrator General's Accounts.—Sections 50-51.)

directed by this Act, or by any such rules and orders as aforesaid, or that the Administrator General has failed to comply with the provisions and directions of this Act or of any such rules and orders, they shall report accordingly to the Government.

50. The Government may refer every such report as last aforesaid to the consideration of the Advocate General for the Presidency, who shall thereupon, if he think fit, proceed summarily against the defaulter or his executor or administrator in the High Court in the Presidency-town, by petition for an account, or to compel obedience to this Act or to such rules and orders as aforesaid, or otherwise as he may think fit, in respect of all or any of the estates then or formerly under the administration of such defaulter;

Proceedings
upon such
report.

[V of 1882

and the said Advocate General may exhibit interrogatories to the said Administrator General, executor or administrator (hereinafter called the defendant), who shall be bound to answer the same as fully as if a commission had been issued under the provisions of the Code of Civil Procedure* for his examination upon the said interrogatories.

The Court shall have power upon any such petition to compel the attendance in Court of the defendant and any witnesses who may be thought necessary, and to examine them orally or otherwise as the said Court thinks fit, and to make and enforce such order or orders as the Court thinks just.

51. The costs, including those of the Advocate General and of the reference to him, if the same be directed by the Court to be paid, shall be defrayed either by the defendant or out of the estates rateably as the said Court directs; and whenever any costs are recovered from the defendant the same shall be repaid to the estates by which they have been in the first instance contributed; and the Court may, if it think fit,

Costs of reference, &c.,
how to be
defrayed.

* This reference to Act VIII of 1859 should now be read as applying to Act XIV of 1882—see s. 3 of the latter Act.

(Part IV.—Of the Audit of the Administrator General's Accounts.—Sections 47-49.)

Auditors to
summon
witnesses
and to call
for books, &c.

47. Every auditor shall have power to summon as well the Administrator General, as any other person whose presence he thinks necessary, to attend him from time to time; and to examine the Administrator General or other person if he thinks fit, on oath or affirmation to be by him administered; and to call for all books, papers, vouchers and documents which appear to him to be necessary for the purposes of the said reference.

If the Administrator General or other person when summoned refuses, or, without reasonable cause, neglects to attend or to produce any book, paper, voucher or document so required, or attends and refuses to be sworn or make an affirmation, or refuses to be examined, the auditors shall certify such neglect or refusal in writing to the High Court at the Presidency town;

Penalty for
non-attendance.

and every person so refusing or neglecting shall thereupon be punishable in like manner as if such refusal or neglect had been in contempt of the said High Court.

Costs of
preparing
schedules,
&c.

48. The costs and expenses of preparing and publishing the said schedules and copies thereof, and of every such reference and examination as aforesaid, shall be defrayed by all the estates to which such schedules or accounts relate.

Such costs and expenses, and the portion thereof to be contributed by each of the said estates, shall be ascertained and settled by the auditors, subject to the approval of the Government, and shall be paid out of the said estates accordingly by the Administrator General.

Special
report to
Government
if accounts
appear
incorrect.

49. If upon any such reference and examination the auditors see reason to believe that the said schedules do not contain a true and correct account of the matters therein contained or which ought to be therein contained, or that the assets have not been duly kept and invested or deposited in the manner directed

(Part IV.—Of the Audit of the Administrator General's Accounts.—Sections 50-51.)

directed by this Act, or by any such rules and orders as aforesaid, or that the Administrator General has failed to comply with the provisions and directions of this Act or of any such rules and orders, they shall report accordingly to the Government.

50. The Government may refer every such report as last aforesaid to the consideration of the Advocate General for the Presidency, who shall thereupon, if he think fit, proceed summarily against the defaulter or his executor or administrator in the High Court in the Presidency-town, by petition for an account, or to compel obedience to this Act or to such rules and orders as aforesaid, or otherwise as he may think fit, in respect of all or any of the estates then or formerly under the administration of such defaulter ;

Proceedings
upon such
report.

V of 1852

and the said Advocate General may exhibit interrogatories to the said Administrator General, executor or administrator (hereinafter called the defendant), who shall be bound to answer the same as fully as if a commission had been issued under the provisions of the Code of Civil Procedure* for his examination upon the said interrogatories. .

The Court shall have power upon any such petition to compel the attendance in Court of the defendant and any witnesses who may be thought necessary, and to examine them orally or otherwise as the said Court thinks fit, and to make and enforce such order or orders as the Court thinks just.

51. The costs, including those of the Advocate General and of the reference to him, if the same be directed by the Court to be paid, shall be defrayed either by the defendant or out of the estates rateably as the said Court directs ; and whenever any costs are recovered from the defendant the same shall be repaid to the estates by which they have been in the first instance contributed ; and the Court may, if it think
fit,

Costs of re-
ference, &c.,
how to be
defrayed.

* This reference to Act VIII of 1859 should now be read as applying to Act XIV of 1882—see s. 3 of the latter Act

(Part V.—Of the Commission of the Administrator General.—Sections 52-53.)

fit, order the defendant to receive his costs out of the said estates.

PART V.

OF THE COMMISSION OF THE ADMINISTRATOR GENERAL.

Commission to be received by Administrators General.

52. The Administrator General of each of the said Presidencies, under any letters of administration granted to him in his official character, or under any probate granted to him of a will wherein he is named as executor by virtue of his office, or under any probates or letters of administration vested in him by section 8 or section 31, shall be entitled to receive a commission at the following rates respectively, namely:—

The Administrator General of Bengal at the rate of three *per centum*, and the Administrators General of Madras and Bombay respectively at the rate of five *per centum*, upon the amount or value of the assets which they respectively collect and distribute in due course of administration.

Section 52 not to apply to property of officers and soldiers dying on service.

53. The last preceding section shall not apply to cases in which the property of an officer or soldier dying on service comes to the hands of the Administrator General of any of the said Presidencies, under the 9th or the 12th section of the Statute called the Regimental Debts Act, 1863;^a

Commission on such property.

and such Administrator General shall not take a percentage on any such property exceeding three *per centum* on the gross amount coming to his hands after the passing of the Administrator General's Act, 1865,^b if preferential charges as defined by the 4th section of the said Statute have been previously paid,

or

^a Printed in the "Collection of Statutes relating to India," Ed. 1881 Vol. II, p. 770

^b Act IV of 1865 was repealed by Act XXIV of 1867.

(Part V.—Of the Commission of the Administrator General.—Sections 54-55.)

or on the gross amount remaining in his hands after payment by him of such charges, as the case may be.

What expenses, &c., commission is to cover.

54. The Administrator General shall be entitled to reimburse himself for any payments made by him in respect of any estate in his charge, which a private administrator of such estate might have lawfully made; but, save as aforesaid, the commission to which the Administrator General of each of the said three Presidencies shall be entitled is intended to cover, not merely the expense and trouble of collecting the assets, but also his trouble and responsibility in distributing them in due course of administration.

It is therefore enacted that one half of such commission shall be payable to and retained by such Administrator General upon the collection of the assets, and the other half thereof shall be payable to the Administrator General who distributes any assets in the due course of administration, and may be retained by him upon such distribution.

How payable.

The amount of the commission lawfully retained by an Administrator General upon the distribution of assets shall be deemed a distribution in the due course of administration within the meaning of this Act.

Commission retained to be deemed a distribution

Explanation.—The carrying of assets to separate accounts in the books of the Administrator General notified as hereinbefore provided, and the transfer of assets to the Official Trustee, shall each be deemed to be a distribution within the meaning of this section.

55. The Governor General in Council may from time to time order the rate of commission hereinbefore authorized to be received by the Administrator General of Bengal to be raised to any rate not exceeding five *per centum* upon the amount or value of the assets which he collects and distributes in due course of administration, and again to be reduced.

Commission of Administrator General of Bengal may be raised and again reduced.

The Governments of the Presidencies of Fort St. George and Bombay respectively may, with the sanction

Commission of Administrators

(Part V.—Of the Commission of the Administrator General.—Sections 52-53.)

fit, order the defendant to receive his costs out of the said estates.

PART V.

OF THE COMMISSION OF THE ADMINISTRATOR GENERAL.

Commission to be received by Administrators General.

52. The Administrator General of each of the said Presidencies, under any letters of administration granted to him in his official character, or under any probate granted to him of a will wherein he is named as executor by virtue of his office, or under any probates or letters of administration vested in him by section 8 or section 31, shall be entitled to receive a commission at the following rates respectively, namely:—

The Administrator General of Bengal at the rate of three *per centum*, and the Administrators General of Madras and Bombay respectively at the rate of five *per centum*, upon the amount or value of the assets which they respectively collect and distribute in due course of administration.

Section 52 not to apply to property of officers and soldiers dying on service.

53. The last preceding section shall not apply to cases in which the property of an officer or soldier dying on service comes to the hands of the Administrator General of any of the said Presidencies, under the 9th or the 12th section of the Statute called the Regimental Debts Act, 1863 ;*

26 & 27 Vict., c. 57.

Commission on such property.

and such Administrator General shall not take a percentage on any such property exceeding three *per centum* on the gross amount coming to his hands after the passing of the Administrator General's Act, 1865,^b if preferential charges as defined by the 4th section of the said Statute have been previously paid,

IV of 1865.

or

* Printed in the "Collection of Statutes relating to India," Ed. 1881 Vol. II, p. 770.

^b Act IV of 1865 was repealed by Act XXIV of 1867.

or on the gross amount remaining in his hands after payment by him of such charges, as the case may be.

What expenses, &c., commission is to cover.

54. The Administrator General shall be entitled to reimburse himself for any payments made by him in respect of any estate in his charge, which a private administrator of such estate might have lawfully made; but, save as aforesaid, the commission to which the Administrator General of each of the said three Presidencies shall be entitled is intended to cover, not merely the expense and trouble of collecting the assets, but also his trouble and responsibility in distributing them in due course of administration.

It is therefore enacted that one half of such commission shall be payable to and retained by such Administrator General upon the collection of the assets, and the other half thereof shall be payable to the Administrator General who distributes any assets in the due course of administration, and may be retained by him upon such distribution.

How payable.

The amount of the commission lawfully retained by an Administrator General upon the distribution of assets shall be deemed a distribution in the due course of administration within the meaning of this Act.

Commission retained to be deemed a distribution

Explanation.—The carrying of assets to separate accounts in the books of the Administrator General notified as hereinbefore provided, and the transfer of assets to the Official Trustee, shall each be deemed to be a distribution within the meaning of this section.

55. The Governor General in Council may from time to time order the rate of commission hereinbefore authorized to be received by the Administrator General of Bengal to be raised to any rate not exceeding five *per centum* upon the amount or value of the assets which he collects and distributes in due course of administration, and again to be reduced.

Commission of Administrator General of Bengal may be raised and again reduced.

The Governments of the Presidencies of Fort St. George and Bombay respectively may, with the sanction

Commission of Administrators

(Part V.—Of the Commission of the Administrator General.—Sections 55A-56.)

General of Madras and Bombay may be reduced and again raised.

tion of the Governor General in Council, from time to time order the aforesaid rate of commission hereby authorized to be received by the Administrators General of Madras and Bombay respectively to be reduced, and again to be raised :

Proviso.

Provided that the commission so to be received shall not at any time exceed five *per centum* of the assets collected, and that no person now holding the office of Administrator General of Bengal, Madras or Bombay shall, by any such order, be deprived of the right to receive and retain, for his own use, a commission at the rate of three *per centum* in respect of all assets collected and actually administered by him.

Commission on assets collected beyond Presidency.

*55A. Notwithstanding anything hereinbefore contained, an Administrator General of a Presidency obtaining probate or letters of administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator General of such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate.

Commission not to be charged by executor or administrator other than Administrator General.

56. No person other than the Administrator General acting officially shall receive or retain any commission or agency charges for anything done as executor or administrator under any probate or letters of administration, or letters *ad colligenda bona*, which have been granted by the Supreme Court or High Court at Fort William in Bengal since the passing of Act No. VII of 1849^b (for the appointment of an Administrator General in Bengal), or by either of the Supreme or High Courts at Madras and Bombay since the passing of Act No. II of 1850^b (to amend and extend

^a S. 55A was inserted by Act IX of 1881, s. 7.

^b Acts VII of 1849 and II of 1850 were repealed by Act VIII of 1855.

1865. extend to Madras and Bombay Act No. VII of 1849), or which have been or shall be granted by any Court of competent jurisdiction within the meaning of sections 187 and 190 of the Indian Succession Act, 1865*;

but this enactment shall not prevent any executor or other person from having the benefit of any legacy bequeathed to him in his character of executor, or by way of commission or otherwise.

Bequest in favour of executors not affected.

PART VI.

MISCELLANEOUS.

57. The Government may from time to time make rules consistent with the provisions of this Act—

Power to make rules—

(a) for the safe custody of the assets and securities which come to the hands or possession of the Administrator General;

for custody of assets;

(b) for the remittance to the India Office of all sums of money payable or belonging to persons resident in Europe, or in other cases where such remittances are required;

for remittance of money;

(c) generally for the guidance of the Administrator General in the discharge of his duties;

for guidance of Administrator General.

and may by such rules amongst other things direct what books, accounts and statements, in addition to those mentioned in this Act, shall be kept by the Administrator General, and in what form the same shall be kept, and what entries the same shall contain, and where the same shall be kept, and where and how the assets and securities belonging to the estates to be administered by such Administrator General shall be kept and invested or deposited pending the administration thereof, and how and at what rate or rates of exchange any remittances thereof shall be made.

Unless any such rules are made and published, the rules now in force in each of the said Presidencies, so far

Proviso as to rules now in force.

* See the revised edition of Act X of 1865, as modified up to the 1st July, 1890, published by the Legislative Department.

(Part V.—Of the Commission of the Administrator General.—Sections 55A-56.)

General of Madras and Bombay may be reduced and again raised.

tion of the Governor General in Council, from time to time order the aforesaid rate of commission hereby authorized to be received by the Administrators General of Madras and Bombay respectively to be reduced, and again to be raised :

Proviso.

Provided that the commission so to be received shall not at any time exceed five *per centum* of the assets collected, and that no person now holding the office of Administrator General of Bengal, Madras or Bombay shall, by any such order, be deprived of the right to receive and retain, for his own use, a commission at the rate of three *per centum* in respect of all assets collected and actually administered by him.

Commission on assets collected beyond Presidency.

*55A. Notwithstanding anything hereinbefore contained, an Administrator General of a Presidency obtaining probate or letters of administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator General of such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate.

Commission not to be charged by executor or administrator other than Administrator General.

56. No person other than the Administrator General acting officially shall receive or retain any commission or agency charges for anything done as executor or administrator under any probate or letters of administration, or letters *ad colligenda bona*, which have been granted by the Supreme Court or High Court at Fort William in Bengal since the passing of Act No. VII of 1819^a (for the appointment of an Administrator General in Bengal), or by either of the Supreme or High Courts at Madras and Bombay since the passing of Act No. II of 1850^b (to amend and extend

^a S. 55A was inserted by Act IX of 1881, s. 7.

^b Acts VII of 1819 and II of 1850 were repealed by Act VIII of 1855, s. 56.

(Part VI.—Miscellaneous.—Section 57.)

extend to Madras and Bombay Act No. VII of 1849), or which have been or shall be granted by any Court of competent jurisdiction within the meaning of sections 187 and 190 of the Indian Succession Act, 1865*;

but this enactment shall not prevent any executor or other person from having the benefit of any legacy bequeathed to him in his character of executor, or by way of commission or otherwise.

Bequest in favour of executors not affected.

PART VI.

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57. The Government may from time to time make rules consistent with the provisions of this Act—

Power to make rules—

(a) for the safe custody of the assets and securities which come to the hands or possession of the Administrator General;

for custody of assets;

(b) for the remittance to the India Office of all sums of money payable or belonging to persons resident in Europe, or in other cases where such remittances are required;

for remittance of money;

(c) generally for the guidance of the Administrator General in the discharge of his duties;

for guidance of Administrator General.

and may by such rules amongst other things direct what books, accounts and statements, in addition to those mentioned in this Act, shall be kept by the Administrator General, and in what form the same shall be kept, and what entries the same shall contain, and where the same shall be kept, and where and how the assets and securities belonging to the estates to be administered by such Administrator General shall be kept and invested or deposited pending the administration thereof, and how and at what rate or rates of exchange any remittances thereof shall be made.

Unless any such rules are made and published, the rules now in force in each of the said Presidencies, so far

Proviso as rules now force.

* See the revised edition of Act X of 1865, as modified up to the 1st July, 1890, published by the Legislative Department.

(Part V.—Of the Commission of the Administrator General.—Sections 55A-56.)

General of Madras and Bombay may be reduced and again raised.

tion of the Governor General in Council, from time to time order the aforesaid rate of commission hereby authorized to be received by the Administrators General of Madras and Bombay respectively to be reduced, and again to be raised :

Proviso.

Provided that the commission so to be received shall not at any time exceed five *per centum* of the assets collected, and that no person now holding the office of Administrator General of Bengal, Madras or Bombay shall, by any such order, be deprived of the right to receive and retain, for his own use, a commission at the rate of three *per centum* in respect of all assets collected and actually administered by him.

Commission on assets collected beyond Presidency.

*55A. Notwithstanding anything hereinbefore contained, an Administrator General of a Presidency obtaining probate or letters of administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator General of such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate.

Commission not to be charged by executor or administrator other than Administrator General.

56. No person other than the Administrator General acting officially shall receive or retain any commission or agency charges for anything done as executor or administrator under any probate or letters of administration, or letters *ad colligenda bona*, which have been granted by the Supreme Court or High Court at Fort William in Bengal since the passing of Act No. VII of 1849^b (*for the appointment of an Administrator General in Bengal*), or by either of the Supreme or High Courts at Madras and Bombay since the passing of Act No. II of 1850^b (*to amend and extend*

^a S. 55A was inserted by Act IX of 1881, s. 7.

^b Acts VII of 1849 and II of 1850 were repealed by Act VIII of 1855.

extend to Madras and Bombay Act No. VII of 1819), or which have been or shall be granted by any Court of competent jurisdiction within the meaning of sections 187 and 190 of the Indian Succession Act, 1865*;

but this enactment shall not prevent any executor or other person from having the benefit of any legacy bequeathed to him in his character of executor, or by way of commission or otherwise.

Bequest in favour of executors not affected.

PART VI.

MISCELLANEOUS.

57. The Government may from time to time make rules consistent with the provisions of this Act—

Power to make rules—

(a) for the safe custody of the assets and securities which come to the hands or possession of the Administrator General;

for custody of assets;

(b) for the remittance to the India Office of all sums of money payable or belonging to persons resident in Europe, or in other cases where such remittances are required;

for remittance of money;

(c) generally for the guidance of the Administrator General in the discharge of his duties;

for guidance of Administrator General.

and may by such rules amongst other things direct what books, accounts and statements, in addition to those mentioned in this Act, shall be kept by the Administrator General, and in what form the same shall be kept, and what entries the same shall contain, and where the same shall be kept, and where and how the assets and securities belonging to the estates to be administered by such Administrator General shall be kept and invested or deposited pending the administration thereof, and how and at what rate or rates of exchange any remittances thereof shall be made.

Unless any such rules are made and published, the rules now in force in each of the said Presidencies, so far

Proviso as to rules now in force.

far

* See the revised edition of Act X of 1865, as modified up to the 1st July.

far as the same are not inconsistent with this Act, shall be of the same force and effect as if the same had been made and published hereunder.

Publication
of new rules.

58. Such rules shall be published in the Gazette of India, the Port St. George Gazette, or the Bombay Government Gazette, as the case may be, and the several Administrators General shall obey and fulfil the same, and the same shall be a full authority and indemnity for all persons acting in pursuance thereof.

Power to
decide when
commission
shall be
deemed
payable.

59. The Governor General in Council may from time to time, either by general rule, or by special order in a particular case, decide any question as to the time at which any commission accruing to the Administrator General in his official capacity shall be deemed to have been payable; and such decision shall bind every Administrator General and the estates held by him in his official capacity.

Orders of
Court to be
equivalent to
decrees.

60. Any order made under this Act by any Court shall have the same effect and be executed in the same manner as a decree.

Power to
examine on
oath.

*60A. The Administrator General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath or affirmation (which he is hereby authorized to administer or take) any person who is willing to be so examined by him regarding such question.

False evi-
dence.

61. Whoever, having been sworn or having taken an affirmation under this Act, makes upon any examination authorized by this Act a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

Assets
vested in
the Administrator
General.

62. All assets in the official charge of the Administrator General of any of the said Presidencies, and appearing from the official books and accounts of the Ecclesiastical Registrar and of the Administrator General of any of those Presidencies, or from the official books

far as the same are not inconsistent with this Act, shall be of the same force and effect as if the same had been made and published hereunder.

Publication
of new rules.

58. Such rules shall be published in the Gazette of India, the Fort St. George Gazette, or the Bombay Government Gazette, as the case may be, and the several Administrators General shall obey and fulfil the same, and the same shall be a full authority and indemnity for all persons acting in pursuance thereof.

Power to
decide when
commission
shall be
deemed
payable.

59. The Governor General in Council may from time to time, either by general rule, or by special order in a particular case, decide any question as to the time at which any commission accruing to the Administrator General in his official capacity shall be deemed to have been payable; and such decision shall bind every Administrator General and the estates held by him in his official capacity.

Orders of
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Power to
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False evi-
dence.

61. Whoever, having been sworn or having taken an affirmation under this Act, makes upon any examination authorized by this Act a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

Assets
unclaimed
for fifteen
years to be
transferred
to Govern-
ment.

62. All assets in the official charge of the Administrator General of any of the said Presidencies, and of the General official books

(Part VI.—Miscellaneous.—Section 63.)

books and accounts of any of those officers, to have been in official custody for a period of fifteen years or upwards without any claim thereto having been made and allowed, shall be transferred and paid to the Comptroller General of Accounts or to the Accountant General to the Government of Fort St. George or Bombay, as the case may be, and be carried to the account and credit of the Government of India for the general purposes of government;

and the receipt of the said Comptroller General or Accountant General, as the case may be, shall be a full indemnity and discharge to the said Administrator General for any such transfer or payment:

Provided that this Act shall not authorize the transfer or payment of any such proceeds as aforesaid, pending any suit heretofore or hereafter instituted in respect thereof. Proviso.

63. If any claim be hereafter made to any part of the securities, moneys or proceeds carried to the account and credit of the Government of India under the provisions of this Act, and if such claim be established to the satisfaction of the Comptroller General or the Accountant General to the Government of Fort St. George or Bombay, as the case may be, the Government of India shall pay to the claimant the amount of the principal so carried to its account and credit or so much thereof as appears to be due to the claimant. Mode of proceeding by claimant to recover principal money so transferred.

If the claim be not established to the satisfaction of the said Comptroller General or Accountant General, as the case may be, the claimant may apply by petition to the High Court at the Presidency-town against the Secretary of State for India, and, after taking evidence either orally or on affidavit in a summary way as the Court thinks fit, the Court shall make such order on the petition for the payment of such portion of the said principal sum as justice requires, and such order shall be binding on all parties to the suit,

and the Court may direct by whom the whole or any part of the costs of each party shall be paid.

64. Whenever

far as the same are not inconsistent with this Act, shall be of the same force and effect as if the same had been made and published hereunder.

Publication
of new rules.

58. Such rules shall be published in the Gazette of India, the Fort St. George Gazette, or the Bombay Government Gazette, as the case may be, and the several Administrators General shall obey and fulfil the same, and the same shall be a full authority and indemnity for all persons acting in pursuance thereof.

Power to
decide when
commission
shall be
deemed
payable.

59. The Governor General in Council may from time to time, either by general rule, or by special order in a particular case, decide any question as to the time at which any commission accruing to the Administrator General in his official capacity shall be deemed to have been payable; and such decision shall bind every Administrator General and the estates held by him in his official capacity.

Orders of
Court to be
equivalent to
decrees.

60. Any order made under this Act by any Court shall have the same effect and be executed in the same manner as a decree.

Power to
examine on
oath.

*60A. The Administrator General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath or affirmation (which he is hereby authorized to administer or take) any person who is willing to be so examined by him regarding such question.

False evi-
dence.

61. Whoever, having been sworn or having taken an affirmation under this Act, makes upon any examination authorized by this Act a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

Assets
unclaimed
for fifteen
years to be
transferred
to Govern-
ment.

62. All assets in the official charge of the Administrator General of any of the said Presidencies, and of the
General
official
books

(Part VI.—Miscellaneous.—Section 63.)

books and accounts of any of those officers, to have been in official custody for a period of fifteen years or upwards without any claim thereto having been made and allowed, shall be transferred and paid to the Comptroller General of Accounts or to the Accountant General to the Government of Fort St. George or Bombay, as the case may be, and be carried to the account and credit of the Government of India for the general purposes of government;

and the receipt of the said Comptroller General or Accountant General, as the case may be, shall be a full indemnity and discharge to the said Administrator General for any such transfer or payment :

Provided that this Act shall not authorize the transfer or payment of any such proceeds as aforesaid, pending any suit heretofore or hereafter instituted in respect thereof. Proviso.

63. If any claim be hereafter made to any part of the securities, moneys or proceeds carried to the account and credit of the Government of India under the provisions of this Act, and if such claim be established to the satisfaction of the Comptroller General or the Accountant General to the Government of Fort St. George or Bombay, as the case may be, the Government of India shall pay to the claimant the amount of the principal so carried to its account and credit or so much thereof as appears to be due to the claimant. Mode of proceeding by claimant to recover principal money so transferred.

If the claim be not established to the satisfaction of the said Comptroller General or Accountant General, as the case may be, the claimant may apply by petition to the High Court at the Presidency-town against the Secretary of State for India, and, after taking evidence either orally or on affidavit in a summary way as the Court thinks fit, the Court shall make such order on the petition for the payment of such portion of the said principal sum as justice requires, and such order shall be binding on all parties to the suit,

and the Court may direct by whom the whole or any part of the costs of each party shall be paid.

64. Whenever

(Part VI.—Miscellaneous.—Section 64)

District Judge in certain cases to take charge of property of deceased persons, and to report to Administrator General.

64. Whenever any person, other than a Hindú, Muhammadan, Parsi^a or Buddhist or a person exempted under the Indian Succession Act, 1865,^b section 332, X of 1865. from the operation of that Act, dies leaving assets within the limits of the jurisdiction of a District Judge, the District Judge shall report the circumstance without delay to the Administrator General of the Presidency, stating the following particulars so far as they may be known to him :—

- (a) the amount and nature of the assets,
- (b) whether or not the deceased left a will, and, if so, in whose custody it is,
- and, on the lapse of one month from the date of the death,
- (c) whether or not any one has applied for probate of the will of the deceased or letters of administration to his effects.

The District Judge shall retain the property under his charge, or appoint an officer under the provisions of the Indian Succession Act, 1865,^b section 239, to take X of 1865. and keep possession of the same until the Administrator General has obtained letters of administration, or until some other person has obtained such letters or a certificate from the Administrator General under the provisions of this Act, when the property shall be delivered over to the person obtaining such letters of administration or certificate, or, in the event of a will being discovered, to the person who may obtain probate of the will.

The District Judge may cause to be paid out of any property of which he or such officer has charge, or out of the proceeds of such property or of any part thereof, such sums as may appear to him to be necessary for all or any of the following purposes, namely :—

- (a) the payment of the expenses of the funeral of the

^a The word "Parsi" in s. 64 was inserted by Act IX of 1891, s. 2

^b See the revised edition of Act X of 1865, as modified up to the 1st July, 1890 published by the Legislative Department.

^c This paragraph of s. 64 was added by Act II of 1860, s. 13.

the deceased and of obtaining probate of his will or letters of administration to his estate and effects,

(b) the payment of wages due for services rendered to the deceased within three months next preceding his death by any labourer, artisan or domestic servant, and

(c) the relief of the immediate necessities of the family of the deceased,

and nothing in section 279, section 280 or section 281 of the Indian Succession Act, 1865,^a or in any other law for the time being in force with respect to rights of priority of creditors of deceased persons, shall be held to affect the validity of any payment so caused to be made.

65. Nothing in this Act is intended to require the Administrator General to take proceedings to obtain letters of administration to the estate or effects of any officer or soldier or other person subject to any Articles of War, unless when the Administrator General is authorized or required so to do by the Military Secretary to Government, or by a Committee of Adjutants or other officers or persons acting under authority for the time being in force relating to the payment of regimental debts;

Act not to require administration of estates of soldiers, unless Administrator General authorized by Military Secretary or Committee of Adjutants

nor is anything in this Act contained intended to interfere with or alter the provisions of any Act of Parliament for regulating the payment of regimental and the distribution of the effects of officers and soldiers dying in the service of Her Majesty in India, any Articles of War.

66. Nothing contained in the Indian Succession Act, 1865,^a or the Indian Companies Act, 1862,^b shall be held to supersede or affect the rights, duties and powers of the Administrators General and Officers

Succession, Act and Companies Act not to affect Administrator General.

ing ral.

^a See the revised edition of Act X of 1865, as modified up to the 1st July, 1890, published by the Legislative Department.

^b The reference to Act X of 1866 has been amended in accordance with Act VI of 1882, s. 2.

(Part VI.—Miscellaneous.—Section 67. Part VII.—
Division of the Presidency of Bengal into Pro-
vinces.—Section 68.)

ing Administrators General of Bengal, Madras and
Bombay respectively.

And nothing contained in the Indian Succession
Act, 1865, or in this Act, or in the said Act No. XXIV
of 1867,^a shall be deemed to affect, or to have affected,
any provisions^b for the time being in force relating to
the moveable property under two hundred rupees in
value of persons dying intestate within any of the
Presidency-towns, which shall be or has been taken
charge of by the police for the purpose of safe custody.

‘67. The Administrator General shall comply with
such requisitions as may be made by the Government
for returns and statements, in such form and manner
as the Government may deem proper.

PART VII.^d

DIVISION OF THE PRESIDENCY OF BENGAL INTO PROVINCES.

68. (1) Notwithstanding anything in the fore-
going provisions of this Act, the Governor General in
Council, upon the occurrence of any vacancy in the
office of the Administrator General of Bengal, may,
by notification in the Gazette of India,—

(a) divide the Presidency of Bengal, as defined in
this Act, into so many Provinces as he thinks
fit,

(b) define the limits of each of those Provinces, and

(c) appoint an Administrator General for each
Province,

and, subject to the provisions of this section, the fol-
lowing consequences shall thereupon ensue, namely:—

(i) the office of Administrator General of Bengal
shall cease to exist :

(ii) the

^a Act XXIV of 1867 is repealed by this Act—see s. 2, *supra*.

^b See Bengal Act IV of 1866, ss. 100, 101 (in Bengal Code, Vol. II,
Ed. 1890, pp. 78, 79); Madras Act III of 1858, s. 30; and (as to Bombay)
Act XIII of 1856, ss. 113, 114 (in Bombay Code, Ed. 1880, pp. 86, 87.)

^c S. 67 was added by Act II of 1890, s. 14.

^d Part VII was added by Act II of 1890, s. 15.

Saving of
provisions of
Presidency
Police Acts
as to petty
estates.

Compliance
with requis-
itions for
returns.

Division of
the Presi-
dency of
Bengal into
Provinces.

X of 1865.

(Part VII.—Division of the Presidency of Bengal into Provinces.—Section 68.)

- (ii) the Administrator General of a Province shall have the like rights and privileges, and perform the like duties, in the territories and dominions included in the Province, as the Administrator General of Bengal had and performed as Administrator General therein :
- (iii) the functions of the Government under this Act shall, as regards the territories and dominions included in a Province, be discharged by the Governor General in Council :
- (iv) the functions of whatsoever kind assigned by the foregoing provisions of this Act to the High Court at Calcutta in respect of the territories and dominions included in a Province shall be discharged by such High Court as the Governor General in Council may, by notification in the Gazette of India, appoint in this behalf, and probate or letters of administration granted to the Administrator General of the Province by the High Court so appointed shall have the same effect throughout the Presidency of Bengal, as defined in this Act, or, if the Court so directs, throughout British India, as, but for the abolition of the office of Administrator General of Bengal, probate or letters of administration granted to the holder of that office by the High Court at Calcutta would have had :
- (v) in the foregoing provisions of this Act the word "Presidency" shall be deemed to include a Province, the expression "Presidency-town" the place of sitting of a High Court appointed by the Governor General in Council under clause (iv) of this sub-section, and the expression "Advocate General" a Government Advocate or other officer appointed by the Governor General in Council to discharge for a Province the functions

under

(Part VII.—Division of the Presidency of Bengal into Provinces.—Section 68)

under this Act of an Advocate General for a Presidency :

- (vi) the provisions of this Act with respect to the commission of the Administrator General of Bengal shall regulate the commission payable to the Administrator General of a Province: and,
- (vii) generally, the provisions of the foregoing sections of this Act with respect to the High Court at Calcutta, and the provisions of those sections or of any other enactment with respect to the Administrator General of Bengal, shall, in relation to a Province, be construed, so far as may be, to apply to the High Court and Administrator General, respectively, appointed for the Province under this section.

(2) Any proceeding which was commenced before the publication of the notification dividing the Presidency of Bengal into Provinces, and to or in which the Administrator General of Bengal in his representative character was a party or was otherwise concerned, shall be continued as if the notification had not been published, and the Administrator General of the Province in which the Town of Calcutta is comprised shall for the purposes of the proceeding be deemed to be the successor in office of the Administrator General of Bengal.

(3) The Court of the Recorder of Rangoon shall be deemed to be a High Court for the purposes of clause (iv) of sub-section (1).

division of the Presidency in this Act, into Provinces, the Administrator General of the Province in which the Town of Calcutta is comprised shall be deemed to be the Administrator General for the whole of the said Presidency for the purposes of the Regimental Debts Act, 1863.*

APPENDIX.

20, 27 Vict.
c. 57.

APPENDIX.

List of Native States included within the Presidencies of Bengal, Madras and Bombay, respectively, by notification under section 3 of Act II of 1874.

Presidency.	States	Year, Part and page of Gazette of India.
BENGAL . . .	<p>BENGAL— Hill Tipperah. Kuch Bihar The Tributary Mahals of Chota Nagpore The Tributary Mahals of Cuttack.</p> <p>ASSAM— The States in the Jaintia and Khasi Hills. Manipur.</p> <p>NORTH-WESTERN PROVINCES— Rampur. Tehri (Garhwal).</p> <p>PUNJAB— Eaghal. Baghat. Balsan. Bashahr. Bhaji. Bhawwalpur. Bijl. Chamba. Darkuti. Dhami. Dujana. Faridkot. Hindér (Nágarh). Jabbal. Jammoo and Kashmir. Jind. Kahlér (Ilāspur). Kalsia. Kapurthala. Keonthal. Kumbharsani. Kunhar. Kuthar. Loharu. Malot. Maler Kotla. Mandi. Mangul. Nábha. Pataudi. Patala.</p>	1878, Part I, p. 138.

(Appendix.)

List of Native States included within the Presidencies of Bengal, Madras and Bombay, respectively, by notification under section 3 of Act II of 1874—contd.

Presidency.	States.	Year, Part and page of Gazette of India.
BENGAL—contd.	<p>PUNJAB—contd.</p> <p>Sāngri. Sirmūr (Nāhan). Suket. Taroch.</p> <p>RAJPUTANA AGENCY—</p> <p>Bhurtpore. Bikanir. Bundi. Dholpur. Jaipur. Jaisalmir. Jhalāwār. Jodhpur or Mārwar. Kerani. Kishengarh. Kota. Lawa. The Merwara parganas belonging to Meywar and Marwar. Shahpura. Tonk (with the exception of Nim- bhera, Pirawa and Sironj). Ulwār.</p> <p>CENTRAL INDIA AGENCY—</p> <p>Gwalior (the whole State, excepting the Sir Subaship of Malwa and certain districts under the Sir Subah of Esangarh, which are included in the Presidency of Bombay).</p> <p>Bandelland and Daghellkhand States and Chiefships—</p> <p>Ajaigarh. Alipura. Bāoni. Behat. Behri. Beronda. Bhaisanda. Bijāwar. Bijna. Chatrapur. Chickhari. Dhattia. Dhorwai.</p>	1878, Part I, p. 438.

(Appendix.)

List of Native States included within the Presidencies of Bengal, Madras and Bombay, respectively, by notification under section 3 of Act II of 1874—contd.

Presidency.	States.	Year, Part and page of Gazette of India.
BENGAL—concl'd.	<p>CENTRAL INDIA AGENCY—contd.</p> <p><i>Bandelkand and Baghelkhand States and Chiefships—contd.</i></p> <p>Geraul. Gaurihar. Jassu. Jigni. Kaniadhaba. Kamta Ryola. Kathi. Lughasi. Mauhir. Nágod. Naiagaon. Orchha. Pahari Banka. Pahara. Paldeo. Punna. Rewah. Sampthar. Sobawal. Surila. Taraon. Torí Fatehpur. Holkar's district of Alampur.</p>	1878, Part I, p. 433.
MADRAS	<p>Banganapalle. Cochin. Paddukottai. Sandur. Travancore. The Dominions of His Highness the Nizam of Hyderabad.</p>	
BOMBAY	<p>Baroda. Cambay. Cutch. Jawar. Jinjira. Khairpur in Sind. Kolharpur. Narukote. Peint.*</p>	

* Peint is now part of British India—see Gazette of India, 1835, Part I, p. 513.

(Appendix.)

List of Native States included within the Presidencies of Bengal, Madras and Bombay, respectively, by notification under section 3 of Act II of 1874—contd.

Presidency.	States.	Year, Part and page of Gazette of India.
BOOMBAY—contd.	<p>The Satara Jagirs. Savanur. Savantwari. The Southern Mahratta States. The States in Kandesb. Ditto Kattywar. Ditto Mahi Kanta. Ditto Palanpur. Ditto Rewa Kanta. Ditto Surat.</p> <p>RAJPUTANA AGENCY— Bikaner. Dungarpur.</p> <p>The Jhalra Patan, Districts of— Dag. Gangwar. Pach Palhar. Oodeypur or Meywar. Pertabgarh. Serohi.</p> <p>The Tonk, Districts of— Nimbhera. Pirawa. Sironj.</p> <p>THE FEUDATORY STATES IN THE CENTRAL PROVINCES— Bilaspur. Bastar. Kanker. Karonel or Kolihandi. Kawarda. Khairagarh. Makur. Nundgaon. Patna. Rangarh Pargarh. Sairakhol. Sarangarh. Sutli. Sonpur.</p>	1878, Part I, p. 438.

(Appendix.)

List of Native States included within the Presidencies of Bengal, Madras and Bombay, respectively, by notification under section 3 of Act II of 1874—contd.

Presidency.	States	Year, Part and page of Gazette of India.
BOMBAY—contd.	<p>CENTRAL INDIA AGENCY—</p> <p>Barwsi. Barwani. Bhopal (the whole State). Devas. Diar. Indore (the whole State, excepting the district of Alampur) Jaora. Jhalna. Jobat Kathiawara Kilchipur Maksudangarh. Mathwar. Muhammadgarh. Narsinghgarh. Rajgarh Rajpur Ali. Ratlam. Rattan Mal Sailana. Sitaman.</p> <p><i>Greater, Districts of—</i></p> <p>Agar. Amphira. Bag. Dikhán. Mandisur Nimach. Sagor. Shujawalpur. Sonkach. Ujjain.</p> <p>Blilsa.</p> <p>Ditto Deputy Blil Ditto Agency. Ditto Gunah Agency. Ditto Western Malwa Agency.</p>	1878, Part I, p. 433.

(Appendix.)

List of Native States included within the Presidencies of Bengal, Madras and Bombay, respectively, by notification under section 3 of Act II of 1874—concl'd.

Presidency.	States.	Year, Part and page of Gazette of India.
BOMBAY—concl'd.	<p>DALUCHISTAN AGENCY— The territories of His Highness the Khan of Kelat. The territories administered by the Agent to the Governor General in Baluchistan as such Agent.</p>	1890, Part I, p. 247.

ACT No. V OF 1902.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL;

*(Received the assent of the Governor General on the 14th
February, 1902)*

An Act further to amend the Law relating to
Administrators General and Official Trustees.

WHEREAS it is expedient further to amend the
law relating to Administrators General and Official
Trustees; It is hereby enacted as follows:—

1. (1) This Act may be called the Administrators
General and Official Trustees Act, 1902; and

Short title
and com-
mencement.

(2) It shall be deemed to have come into force
on the first day of January, 1902.

2. (1) The Government may appoint a Deputy to
assist the Administrator General as Administrator
General and, if he is also Official Trustee, as Official
Trustee; and the Deputy so appointed shall, subject
to the control of the Government and the general or
special orders of the Administrator General, be com-
petent to discharge any of the duties and to perform
any of the functions of the Administrator General as
Administrator General or, if he is also Official Trust-
tee, as Official Trustee.

Appointment
of Deputy
Administrator
General and
Official
Trustee.

(2) A Deputy appointed under sub-section (1)
may be either a barrister or a solicitor or attorney, and,

3. (1) Notwithstanding anything in the Admin-
istrator General's Act, 1874, or the Official Trustees
Act, 1861, the Administrator General may be remu-
nerated by such fixed salary and allowances, and on
such terms and subject to such conditions, as the

Remunera-
tion of Ad-
ministrator
General as
such and as
Official
Trustee.

Governor

(Appendix.)

List of Native States included within the Presidencies of Bengal, Madras and Bombay, respectively, by notification under section 3 of Act II of 1874—concl'd.

Presidency.	States.	Year, Part and page of Gazette of India.
BOMBAY—concl'd.	<p>BALUCHISTAN AGENCY— The territories of His Highness the Khan of Kelat. The territories administered by the Agent to the Governor General in Baluchistan as such Agent.</p>	1890, Part I, p. 217.

ACT No. V OF 1902.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL:

(Received the assent of the Governor General on the 14th February, 1902)

An Act further to amend the Law relating to Administrators General and Official Trustees.

WHEREAS it is expedient further to amend the law relating to Administrators General and Official Trustees; It is hereby enacted as follows:—

1. (1) This Act may be called the Administrators General and Official Trustees Act, 1902; and

Short title and commencement.

(2) It shall be deemed to have come into force on the first day of January, 1902.

2. (1) The Government may appoint a Deputy to assist the Administrator General as Administrator General and, if he is also Official Trustee, as Official Trustee; and the Deputy so appointed shall, subject to the control of the Government and the general or special orders of the Administrator General, be competent to discharge any of the duties and to perform any of the functions of the Administrator General as Administrator General or, if he is also Official Trustee, as Official Trustee.

Appointment of Deputy Administrator General and Official Trustee.

(2) A Deputy appointed under sub-section (1) may be either a barrister or a solicitor or attorney, and, notwithstanding anything in the Administrator General's Act, 1874, any Deputy so appointed may officiate as Administrator General.

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3. (1) Notwithstanding anything in the Administrator General's Act, 1874, or the Official Trustees Act, 1861, the Administrator General may be remunerated by such fixed salary and allowances, and on such terms and subject to such conditions, as the Governor

Remuneration of Administrator General as such and as Official Trustee.

874.
if

[Price one anna and nine pies.]

Governor General in Council may direct; and, where he is so remunerated, he shall be entitled to no further remuneration whatsoever, but shall transfer and pay to such officer, in such manner, and at such times, as the Governor General in Council may, by general or special order, require, all moneys payable to and received by him as Administrator General or, if he is also Official Trustee, as Official Trustee, by way of commission or other remuneration for his service, and the same shall be carried to the account and credit of the Government for the general purposes of the Government; and in such case all the expenses of the establishment necessary for the office of the Administrator General, and, if he is also Official Trustee, for that of Official Trustee, including the provision of office accommodation, together with all other charges to which the said office or offices may be subject, shall be defrayed by the Government.

(2) Nothing in this Act shall be deemed to render the Government or the Administrator General appointed after the commencement of this Act liable for anything done or purporting to be done by or under the authority of the Administrator General before the commencement of this Act, or, where the Administrator General is also Official Trustee, for anything done or purporting to be done by or under the authority of any Official Trustee appointed before the appointment of the Administrator General to be Official Trustee.

(3) The Government shall be deemed to be responsible for the civil liabilities of any Administrator General remunerated by such fixed salary and allowances as aforesaid as Administrator General or, if he is also Official Trustee, as Official Trustee.

(4) Notwithstanding anything in the Code of Civil Procedure, a suit to enforce any such civil liability as aforesaid shall be brought against the Administrator General as Administrator General or, if he is also Official Trustee, as Official Trustee, as the case may be, by his name of office; and no suit so brought shall

XIV of
1892.

shall abate by reason of the death, resignation, suspension or removal of the person holding the office of Administrator General or Official Trustee.

II of 1874. 4. (1) The second proviso to section 9, and section 56, of the Administrator General's Act, 1874, are hereby repealed.

Repeal of part of section 9, and section 56, Act II, 1874, and provisions regarding private executors and administrators.

(2) The High Court of the Province may, on application made to it, suspend, remove or discharge any private executor or administrator and provide for the succession of another person to the office of any such executor or administrator who may cease to hold office, and the vesting in such successor of any property belonging to the estate.

II of 1874. (3) No private executor or administrator shall be entitled to receive or retain any commission or agency charges at a higher rate than that for the time being fixed in respect of the Administrator General by or under the Administrator General's Act, 1874.

5. (1) So far as regards the Administrator General of any of the Presidencies of Bengal, Madras and Bombay, the High Court at the Presidency-town may, on application made to it, give to such Administrator General any general or special directions in regard to any estate in his charge or any trust of which he is the Official Trustee, or in regard to the administration of any such estate or trust.

Power for High Court to give directions regarding administration of estate or trust.

(2) The High Court of the Province may, in like manner, give similar directions to any private executor or administrator other than the Administrator General acting officially.

II of 1874. XVII of 1861. 6. The High Court of the Province may make rules for assigning jurisdiction under the Administrator General's Act, 1874, or the Official Trustees Act, 1861, to subordinate Courts, and for defining such jurisdiction.

Power for High Court to make rules assigning jurisdiction.

7. The Administrator General acting as such or as Official Trustee, and any private executor or administrator, may, in addition to, and not in derogation

General powers of administration.

of,

of, any other powers of expenditure lawfully exercisable by him, incur expenditure—

- (a) on such acts as may be necessary for the proper care and management of any property belonging to any estate or trust administered by him; and,
- (b) with the sanction of the High Court at the Presidency-town in the case of the Administrator General, or with that of the High Court of the Province in the case of a private executor or administrator, on such religious, charitable and other objects, and on such improvements, as may be reasonable and proper in the case of such property.

Provision for administration by consular officer in case of death in certain circumstances of foreign subject.

8. Notwithstanding anything in the Administrator General's Act, 1874, or in any other enactment or rule of law for the time being in force, the Governor General in Council may, by general or special order, direct that, where a subject of a foreign State dies in British India and it appears that there is no one in British India, other than the Administrator General, entitled to apply to a Court of competent jurisdiction for letters of administration of the estate of the deceased, letters of administration shall, on the application to such Court of any consular officer of such foreign State, be granted to such consular officer on such terms and conditions as the Court may, subject to any rules made in this behalf by the Governor General in Council by notification in the Gazette of India, think fit to impose. II of 1874.

Amendment of section 256, Act X, 1865.

9. In section 256 of the Indian Succession Act, 1865, as amended by section 6 of the Probate and Administration Act, 1889, after the word "administration" the words and figures "other than a grant under section 212" shall be inserted. X of 1865. VI of 1889.

Act to be read with Acts II, 1874, and XVII, 1861.

10. This Act shall be read with, and taken as amending, the Administrator General's Act, 1874, and the Official Trustees Act, 1861. II of 1874. XVII of 1861.

ACT No. VII of 1901.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 22nd March, 1901.)

An Act to place Native Christians in the same position as Hindus, Muhammadans and Buddhists in the matter of obtaining letters of administration and for other purposes.

WHEREAS it is expedient to place Native Christians on the same footing as Hindus, Muhammadans and Buddhists in the matter of obtaining letters of administration; to exempt them from the operation of certain provisions of the Administrator General's Act, 1874, from which Hindus, Muhammadans, Parsis and Buddhists are exempted; and to enable them to obtain certificates under the Succession Certificates Act, 1889, in certain cases; It is hereby enacted as follows:—

1. (1) This Act may be called the Native Christian Administration of Estates Act, 1901; and

Short title
and com-
mencement.

(2) It shall come into force at once.

2. In this Act, the expression "Native Christian" means a native of India who is, or in good faith claims to be, of unmixed Asiatic descent and who professes any form of the Christian religion.

Definition.

3. Sections 190 and 239 of the Indian Succession Act, 1865, shall not apply to any part of the property of a Native Christian who has died intestate.

Exemption
of Native
Christians
from sections
190 and 239,
Act X, 1865.

4. In sections 16, 17, 18, 37 and 64 respectively of the Administrator General's Act, 1874, before the word

Exemption of
Native Chris-
tians from

"Hindu"

[Price one anna and three pice.]

II of 1874.

VII of 1889.

X of 1865.

II of 1874.

Administrators General and Official Trustees. [ACT V, 1902.]

of, any other powers of expenditure lawfully exercisable by him, incur expenditure—

- (a) on such acts as may be necessary for the proper care and management of any property belonging to any estate or trust administered by him; and,
- (b) with the sanction of the High Court at the Presidency-town in the case of the Administrator General, or with that of the High Court of the Province in the case of a private executor or administrator, on such religious, charitable and other objects, and on such improvements, as may be reasonable and proper in the case of such property.

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Act X, 1865.

4. In sections 16, 17, 18, 37 and 64 respectively of the Administrator General's Act, 1874, before the word "Hindu"

Exemption of
Native Chris-
tians from

Native Christian Admn. of Estates. [ACT VII, 1901.]

Certain sections of Act II of 1874.

"Hindu" wherever it occurs, the word "Native Christian" shall be inserted:

Provided that nothing contained in this section shall affect any probate, letters of administration or certificate granted or vested under the said Act.

Grant of certificates under Act VII of 1889 to Native Christians in certain cases.

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X of 1865.

GOVERNMENT OF INDIA
LEGISLATIVE DEPARTMENT.

THE

PROBATE AND ADMINISTRATION ACT. 1881
(ACT V OF 1881),

AS MODIFIED UP TO THE 1ST JULY, 1910.

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CALCUTTA
SUPERINTENDENT GOVERNMENT PRINTING, INDIA
1910

Price Annas Twelve.

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(d).—*Grants with Exception.*

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- 154. Amendment of Hindú Wills Act, 1870.
- 155. Validation of grants of probate and administration made in Lower Burma.
- 156. [*Repealed.*]
- 157. Surrender of revoked probate or letters of administration.

ACT No. V OF 1881.¹

[21st January, 1881.]

An Act to provide for the grant of Probates of Wills and Letters of Administration to the estates of certain deceased persons.

[As modified up to the 1st July, 1910.]

WHEREAS it is expedient to provide for the grant Preamble.
of probate of wills and letters of administration to the estates of deceased persons in cases to which the 'Indian Succession Act, 1865, does not apply : It is hereby enacted as follows :—

of 1865.

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Probate and Ad-Short title.
ministration Act, 1881 :

It

SECTIONS.

- 142. When unsatisfied legatee must first proceed against executor, if solvent.
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CHAPTER I.

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1. This Act may be called the Probate and Ad- Short title.
ministration Act, 1881 :

It

Probate and Administration. [ACT V
(Chapter I.—Preliminary.)

Local extent. It applies to the whole of 'British India;
Commence- and it shall come into force on the first day of
ment. April, 1881.

Personal 2. Chapters II to XIII, both inclusive, of this
application. Act shall apply in the case of every Hindu, Muham-
madan, Buddhist and person exempted under section
332 of the "Indian Succession Act, 1865, dying X of 18
before, on or after the said first day of April, 1881 :

Provided that nothing herein contained shall be
deemed to render invalid any transfer of property
duly made before that day :

Provided also that, except in cases to which the
'Hindu Wills Act, 1870, applies, XXI of

no Court in any local area beyond the limits of
the towns of Calcutta, Madras and Bombay and ³ the
territories for the time being administered by the
Chief Commissioner of British Burma,

and no High Court, in exercise of the concurrent
jurisdiction over such local area hereby conferred,

shall receive applications for probate or letters of
administration until the Local Government has, with
the previous sanction of the Governor General in
Council,

¹ This Act has been declared to be in force in Upper Burma generally

1894.

² Genl. Acts, Vol. II.

³ For "the territories," etc., read now Lower Burma, see the Burma Laws
Act 1898 (13 of 1898), s. 7, Bur Code. The Chief Commissioner is now
Lieutenant-Governor of Burma, see Proclamation, dated 11th April, 1897,
Gazette of India, 1897, Pt. I, p. 261.

1881.] *Probate and Administration.*
(Chapter I.—Preliminary.)

Council, by a notification in the official Gazette,
 ' authorized it so to do.

3. In

¹ The following Courts have been authorized to receive applications for probate and letters of administration within the areas mentioned, namely:—

Ajmer-Merwara the Court of the Chief Commissioner and the Court of the Commissioner, *see* Gazette of India, 1889, Pt. II, p. 534;
 the Andaman and Nicobar Islands: the Court of the Deputy Superintendent and the Court of the Chief Commissioner, *see* Gazette of India, 1881, Pt. I, p. 214;

Assam, the High Court at Calcutta, throughout Assam, all District Judges, as defined in the Act, within the Province, and such territories subject to time appoint 180;
 the Bengal and A Code as to districts transferred to Eastern Bengal and Assam and as to the Sambalpur district transferred to Bengal); all District Judges,

Bombay

as the High Court may from time to time appoint as District

terri-
 (see
 riot);
 which
 Pt.

III, p. 277;

of the

.. .. . subject in the

Act, within the said territories; and such Judicial Officers as the High Court may from time to time appoint as Delegates, *see* Mad R. and O, p. 161;

the Punjab: the Chief Court, throughout the territories administered by the Lieutenant-Governor of the Punjab; all District Judges, as defined in the Act, within the said territories; and such Judicial Officers as the Chief Court may from time to time appoint as District Delegates, *see* Punjab Gazette, 1881, Pt. I, p. 483; these territories at the time included the North-West Frontier Province;

the United Provinces, the High Court at Lucknow, all District Judges, within the said territories subject to the provisions of the Act, and the Commissioner of Oudh, Chief Commissioner [see

Act, 1902, 7 of 1903, Genl. Act, vol. V; all District Judges, as defined in the Act, within the United Provinces; and such Judicial Officers as the High Court or the Judicial Commissioner may from time to time appoint as District Delegates, *see* U. P. R. and O ;

Upper Burma: the Court of the Judicial Commissioner and all District Courts, *see* Burma Gazette, 1897, Pt. I, p. 289.

Interpreta-
tion-clause

3. In this Act, unless there be something repugnant in the subject or context,—

“Province”

“Province” includes any division of British India having a Court of the last resort :

“minor” :

“minor” means any person subject to the ^{IX of 1875.} Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed his age of eighteen years; and “minority” means the status of any such person :

“will” :

“will” means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death :

“codicil” :

“codicil” means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will :

“specific
legacy” :

“specific legacy” means a legacy of specified property :

“demonstra-
tive legacy” :

“demonstrative legacy” means a legacy directed to be paid out of specified property :

“probate” :

“probate” means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator :

“executor” :

“executor” means a person to whom the execution of the last will of a deceased person is, by the testator’s appointment, confided :

“adminis-
trator” :

“administrator” means a person appointed by competent authority to administer the estate of a deceased person when there is no executor : and

“District
Judge”.

“District Judge” means the Judge of a principal civil court of original jurisdiction.

CHAPTER II.

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

4. The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

Character and property of executor or administrator as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

5. When a will has been proved and deposited in a Court of competent jurisdiction situated beyond the limits of the Province, whether in the British dominions or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Administration with copy annexed of authenticated copy of will proved abroad.

6. Probate can be granted only to an executor appointed by the will.

Probate only to appointed executor.

7. The appointment may be express or by necessary implication.

Appointment express or implied.

Illustrations.

(a) A wills that C be his executor if B will not. B is appointed executor by implication.

(b) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(c) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words:—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

(Chapter II—Of Grant of Probate and Letters of Administration.)

16. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship;

Grant of administration where executor has not renounced.

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Exception.

17. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Form and effect of renunciation of executorship.

18. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Procedure where executor renounces or fails to accept within time limited.

19. When the deceased has made a will, but has not appointed an executor, or

Grant of administration to universal or residuary legatee.

when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will, but before he has administered all the estate of the deceased,

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be undistributed.

20. When a residuary legatee who has a beneficial interest survives the testator, but dies before the

Right to administration of representative estate

(Chapter II.—Of Grant of Probate and Letters of Administration. Chapter III.—Of Limited Grants.)

representative of deceased residuary legatee

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee

Citation before grant of administration to legatee other than universal or residuary.

To whom administration may be granted.

estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

21. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

22. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

23. When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

CHAPTER III.

OF LIMITED GRANTS.

(a).—Grants limited in Duration.

Probate of copy or draft of lost will.

24. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong
or

1881.] *Probate and Administration.*

(Chapter III.—Of Limited Grants.)

or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

25. When the will has been lost or destroyed, and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence Probate of contents of lost or destroyed will.

26. When the will is in the possession of a person, residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced. Probate of copy where original exists.

27. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced. Administration until will produced.

(b) — *Grants for the Use and Benefit of Others having Right.*

28. When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself. Administration with will annexed to absent executor.

29. When any person to whom, if present, letters of administration with the will annexed might be granted, Administration with will annexed to attorney of

Probate and Administration. [ACT V
(Chapter III.—Of Limited Grants.)

absent person, who, if present, would be entitled to administer. Administration to attorney of absent person entitled to administer in case of intestacy.

Administration during minority of sole executor or residuary legatee.

Administration during minority of several executors or residuary legatees.

Administration for use and benefit of lunatic.]

Administration pendant: *lit.*

granted, is absent from the Province, letters of administration with the will annexed may be granted to his agent, limited as above mentioned.

30. When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before-mentioned.

31. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

32. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

33. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates applicable in the case of the deceased, be a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be.

34. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall

(Chapter III.—Of Limited Grants.)

shall have all the rights and powers of a general administrator other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

(c).—For Special Purposes.

35. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and, if he should appoint an agent to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited. Probate limited to purpose specified in will.

36. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly. Administration with will annexed limited to particular purpose.

37. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf. Administration limited to trust-property.

38. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution. Administration limited to suit.

39. If,

Probate and Administration. [ACT V
(Chapter III.—Of Limited Grants.)

Administra-
tion limited
to purpose of
becoming
party to suit
to be brought
against exe-
cutor or ad-
ministrator.

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has or have been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, such Court may grant to any person whom it thinks fit letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Administra-
tion limited
to collection
and preserva-
tion of de-
ceased's pro-
perty.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Appoint-
ment, as ad-
ministrator,
of person
other than
one who un-
der ordinary
circum-
stances would
be entitled to
administra-
tion.

41. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of the Province, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as he thinks fit to be administrator;

and in every such case letters of administration may be limited or not as the Judge thinks fit.

(d).—Grants with Exception.

Probate or
administra-
tion with
will annexed
subject to
exception.

42. Whenever the nature of the case requires that an exception be made, probate of a will or letters of administration with the will annexed shall be granted subject to such exception.

43. Whenever

*(Chapter III.—Of Limited Grants. Chapter IV.—
Alteration and Revocation of Grants.)*

43. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

Administration with exception.

(e).—Grants of the Rest.

44. Whenever a grant with exception, of probate or letters of administration with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

Probate or administration of rest.

(f).—Grants of Effects unadministered

45. If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Grant of effects unadministered.

46. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Rules as to grants of effects unadministered.

47. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

Administration when limited grant expired, and still some part of estate unadministered.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

48. Errors in names and descriptions, or in setting forth the time and place of the deceased's death

What errors may be rectified by Court.

Probate and Administration. [ACT V
(Chapter IV.—Alteration and Revocation of
Grants.)

or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

Procedure
where codicil
discovered
after grant
of adminis-
tration with
will annexed.

49. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

Revocation
or annulment
for just
cause.

50. The grant of probate or letters of administration may be revoked or annulled for just cause.

"Just cause."

Explanation.—"Just cause" is—

1st, that the proceedings to obtain the grant were defective in substance;

2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

4th, that the grant has become useless and inoperative through circumstances;

5th, that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Act, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations.

(a) The Court by which the grant was made had no jurisdiction.

(b) The

¹ The 5th clause of the *Explanation* to s. 50 was added by the Probate and Administration Act, 1889 (52 of 1889), s. 11, Genl. Acts, Vol. IV.

(Chapter V.—Of the Practice in granting and revoking Probates and Letters of Administration.)

(b) The grant was made without citing parties who ought to have been cited.

(c) The will of which probate was obtained was forged or revoked.

(d) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(e) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(f) Since probate was granted, a later will has been discovered.

(g) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will.

(h) The person to whom probate was, or letters of administration were, granted, has subsequently become of unsound mind.

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

51. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

Jurisdiction of District Judge in granting and revoking probates, etc.

52. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe :

Power to appoint Delegate of District Judge to deal with non-contentious cases.

Provided

Probate and Administration. [ACT V
(Chapter V.—Of the Practice in granting and
revoking Probates and Letters of Administra-
tion.)

Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

District
Judge's
powers as to
grant of
probate and
administra-
tion.

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

District
Judge may
order person
to produce
testamentary
papers.

54. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same,

and he shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the ¹ Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

Proceedings
of District
Judge's

55. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters

(Chapter V—Of the Practice in granting and revoking Probates and Letters of Administration.)

letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the ¹ Code of Civil Procedure.

Court in relation to probate and administration.

56. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, had at the time of his decease a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

When probate or administration may be granted by District Judge.

57. When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, grant them absolutely, or limited to the property within h

Disposal of application made to Judge of district in which deceased had no fixed abode.

58. Probate and letters of :
upon application for that purp :
Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.

administration may be granted by Delegate

59. Probate or letters of administration shall have effect over all the property, moveable or immoveable, of the deceased throughout the Province in which the same is ² [or are] granted,

Conclusiveness of probate or letters of administration

and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him,

and

¹ See now Act 5 of 1908, Genl Acts, Vol. VI

² The words "or are" were inserted by the Repealing and Amending Act, 1891 (12 of 1891), Genl. Acts, Vol. IV.

(Chapter V.—Of the Practice in granting and revoking Probates and Letters of Administration.)

and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted :

Effect of unlimited probates, etc., granted by certain Courts. ¹ [Provided that probates and letters of administration granted—

(a) by a High Court, or

(b) by a District Judge, where the deceased at the time of his death had his fixed place of abode situate within the jurisdiction of such Judge, and such Judge certifies that the value of the property affected beyond the limits of the province does not exceed ten thousand rupees,

shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.]

Transmission to High Courts of certificate of grants under proviso to section 59.

60. ² [(1) Where probate or letters of administration has or have been granted by a Court with the effect referred to in the proviso to section 59, the High Court or District Judge shall send a certificate thereof to the following Courts, namely :—

(a) When the grant has been made by a High Court, to each of the other High Courts,

(b) When the grant has been made by a District Judge, to the High Court to which such District Judge is subordinate and to each of the other High Courts.

(2) Every certificate referred to in sub-section (1) shall be to the following effect, namely :—

“ I, A. B., Registrar [*or as the case may be*] of the High Court of Judicature at

[*or*

¹ This proviso was substituted by s. 3 of the Probate and Administration Act, 1903 (8 of 1903), Genl. Acts, Vol. V.

² Section 60 was substituted by s. 3 (2) of the Probate and Administration Act, 1903 (8 of 1903), Genl. Acts, Vol. V.

(Chapter V.—Of the Practice in granting and revoking Probates and Letters of Administration.)

[or as the case may be], hereby certify that on the day of the High Court of Judicature at [or as the case may be] granted probate of the will [or letters of administration of the estate] of C. D., late of deceased, to E. F. of and

62 H. of , and that such probate letters] has [or have] effect over all the property the deceased throughout the whole of British lia ”;

and such certificate shall be filed by the High Court receiving the same.

(3) Where any portion of the assets has been sold by the petitioner, as hereinafter provided in sections 62 and 64, to be situate within the jurisdiction of a District Judge in another Province, the District Judge required to send the certificate referred to in section (1) shall send a copy thereof to such District Judge, and such copy shall be filed by the District Judge receiving the same.]

. The application for probate or letters of administration, if made and verified in the manner after mentioned, shall be conclusive for the effect of authorizing the grant of probate or administration, and no such grant shall be impeached on that the testator or intestate had no fixed abode, or no property within the district at the time of his death, unless by a proceeding to set aside the grant if obtained by a fraud upon the

Conclusive-ness of application for probate or administration, if properly made and verified.

Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the cases mentioned in sections 24, 25 and

Petition for Probate.

(Chapter V.—Of the Practice in granting and revoking Probates and Letters of Administration.)

Additional statements in petition for probate, etc.

65. Every person applying to any of the Courts mentioned in the proviso to section 59 for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by sections 62 and 64, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section 59 may, if it think fit, reject the same.

Petition for probate or administration to be signed and verified

66. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect :—

“ I (A. B.), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief.”

Verification of petition for probate by one witness to will.

67. Where the application is for probate, or for letters of administration with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following :—

“ I (C. D.), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (or mark) thereto (as the case may be) (or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence).”

68. If

(Chapter V.—Of the Practice in granting and revoking Probates and Letters of Administration.)

68. If any petition or declaration which is here- by required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

Punishment
for false
averment in
petition or
declaration

69. In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit,
to examine the petitioner in person upon oath,
and also

District
Judge may
examine
petitioner in
person,

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

require
further
evidence,

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration

and issue
citations to
inspect
proceedings.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the district, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

Publication
of citation

¹[Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another Province, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued the citation.]

70. Caveats

¹ This paragraph was added to section 69 by s. 3 (f) of the Probate and Administration Act, 1903 (8 of 1903), Genl. Acts, Vol. V.

(Chapter V.—Of the Practice in granting and revoking Probates and Letters of Administration.)

Caveats
against grant
of probate
or adminis-
tration

70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate;

and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge;

and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Form of
caveat.

71. The caveat shall be to the following effect :—

“ Let nothing be done in the matter of the estate of *A. B.*, late of _____, deceased, who died on the day of _____ at _____, without notice to *C. D.* of _____.”

After entry
of caveat, no
proceeding
taken on peti-
tion until
after notice
to caveator.

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

District Dele-
gate when
not to grant
probate or
administra-
tion.

73. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By “ contention ” is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

74. In

(Chapter V.—Of the Practice in granting and revoking Probates and Letters of Administration.)

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration Power to transmit statement to District Judge in doubtful cases where no contention. when any question application for the administration, the

District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

75. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; Procedure where there is contention or District Delegate thinks probate or letters of administration should be refused in his Court.

unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

76. Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following:— Grant of probate to be under seal of Court.

“ I, _____, Judge of the District of _____, [or Form of such Delegate appointed for granting probate or letters of grant. administration in (here insert the limits of the Delegate's jurisdiction)] hereby make known that on the _____ day of _____ in the year _____ the last will _____ of _____

(Chapter V.—Of the Practice in granting and revoking Probates and Letters of Administration.)

of _____, late of _____, a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to _____, the executor in the said will named, [he having undertaken to administer the same and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.]

The _____ day of _____, 18 ____.

Grant of letters of administration to be under seal of Court.

77. Whenever it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following:—

Form of such grant.

“ I, _____, Judge of the District of _____, [or Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the _____ day of _____ letters of administration (with or without the will annexed, as the case may be) of the property and credits of _____, late of _____, deceased, were granted to _____, the father (or as the

case

1 These words in s. 76 were substituted for the words “ he having undertaken to administer the same and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.”

(Chapter V.—Of the Practice in granting and revoking Probates and Letters of Administration.)

case may be) of the deceased, '[he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.]

The day of 18."

78. Every person to whom any grant of letters of administration is committed, and, if the Judge so direct, any person to whom probate is granted, shall give a bond to the Judge of the District Court, to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs. Administration-bond.

79. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, Assignment of administration-bond

and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit,

assign the same to some proper person,

who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court,

¹ These words in s. 77 were substituted for the words "he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date" by the Probate and Administration Act, 1889 (6 of 1889), s. 13, Genl. Acts, Vol. IV.

(Chapter V.—Of the Practice in granting and revoking Probates and Letters of Administration.)

Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

Time before which probate or administration shall not be granted.

80. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

Filing of original wills of which probate or administration with will annexed granted.

81. Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him;

and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

Grantee of probate or administration alone to sue, etc., until same revoked.

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

Procedure in contentious cases

83. In any case before the District Judge in which there is contention, the ²[proceedings] shall take, as nearly as may be, the form of a suit, according to the provisions of the ³Code of Civil Procedure, XIV of 18 in

¹ For rules made by the Government of:
Bengal, see Ben. Stat. R. and O;
Burma, see Bur. Gazette, 1892, Pt. I, p. 126, and *ibid.* 1891,
Pt. I, p. 80;
Madras, see Fort St. George Gazette, 1903, Pt. I, p. 792, and
Mad. R. and O ;

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in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

84. Where any probate is, or letters of administration are, revoked, all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

Payment to executor or administrator before probate or administration revoked.

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Right of such executor or administrator to recoup himself.

85. Notwithstanding anything hereinbefore contained, it shall, except in cases to which the 'Hindu Wills Act, 1870, applies, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

Power to refuse letters of administration.

86. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the 'Code of Civil Procedure applicable to appeals.

Appeals from orders of District Judge.

87. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

Concurrent jurisdiction of High Court.

CHAPTER VI.

¹ Genl. Acts, Vol. II.

² See now the Code of Civil Procedure, 1908 (Act 5 of 1908) Genl. Acts, Vol. VI.

Probate and Administration. [ACT V
(Chapter VI.—Of the Powers of an Executor or
Administrator.)

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

In respect of causes of action surviving deceased, and debts due at death.

88. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

Demands and rights of suit of or against deceased survive to and against executor or administrator.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the 'Indian Penal Code, XLV of or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustration.

A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

Power of executor or administrator to dispose of property.

90. (1) An executor or administrator has, subject to the provisions of this section, power to dispose, as he thinks fit, of all or any of the property for the time being vested in him under section 4.

(2) The power of an executor to dispose of immoveable property so vested in him is subject to any restriction which may be imposed in this behalf by the will appointing him, unless probate has been granted

¹ Genl. Acts, Vol. I.

² This section was substituted by s. 14 of the Probate and Administration Act, 1859 (6 of 1859). For validation of acts under grants of Administration made before the commencement of Act 6 of 1859, s. 19 of that Act, Genl. Acts, Vol. IV.

(Chapter VI.—Of the Powers of an Executor or Administrator.)

granted to him and the Court which granted the probate permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

(3) An administrator may not, without the previous permission of the Court by which the letters of administration were granted,—

(a) mortgage, charge or transfer by sale, gift, exchange or otherwise any immoveable property for the time being vested in him under section 4, or

(b) lease any such property for a term exceeding five years.

(4) A disposal of property by an executor or administrator in contravention of sub-section (2) or sub-section (3), as the case may be, is voidable at the instance of any other person interested in the property.

(5) Before any probate or letters of administration is or are granted under this Act there shall be endorsed thereon or annexed thereto a copy of sub-sections (1), (2) and (4), or of sub-sections (1), (3) and (4), as the case may be.

(6) A probate or letters of administration shall not be rendered invalid by reason of the endorsement or annexure required by the last foregoing sub-section not having been made thereon or attached thereto, nor shall the absence of such an endorsement or annexure authorize an executor or administrator to act otherwise than in accordance with the provisions of this section.

91. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Purchase by executor or administrator of deceased's property

92.

(Chapter VI.—Of the Powers of an Executor or Administrator. Chapter VII.—Of the Duties of an Executor or Administrator.)

administrators exercise-
able by one.

direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(a) One of several executors has power to release a debt due to the deceased.

(b) One has power to surrender a lease.

(c) One has power to sell the property of the deceased, moveable or immoveable.

(d) One has power to assent to a legacy.

(e) One has power to endorse a promissory note payable to the deceased.

(f) The will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

Survival of
powers on
death of one
of several
executors or
administrators.

93. Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

Powers of
administrator
of effects
unadminis-
tered.

94. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of
administrator
during
minority.

95. An administrator during minority has all the powers of an ordinary administrator.

Powers of
married exe-
cutrix or
administra-
trix.

96. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

As to de-
ceased's fu-
neral cere-
monies.

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition,

(Chapter VII.—Of the Duties of an Executor or Administrator.)

condition, if he has left property sufficient for the purpose.

¹ 98. (1) An executor or administrator shall, Inventory and account. within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character,

and shall in like manner, within one year from the grant or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of

(2) The High Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited

(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the of 1860. ² Indian Penal Code.

(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code.

99. In all cases where ³ [a grant has been made] Inventory to include property in any part of British India. of probate or letters of administration intended to have effect throughout the whole of British India, the

¹ This section was substituted by s. 15 of the Probate and Administration Act, 1889 (6 of 1889), Genl. Acts, Vol. IV.

² Genl. Acts, Vol. I

³ These words in s. 99 were substituted for the words, "it is sought to obtain a grant" by the Probate and Administration Act, 1889 (6 of 1889), s. 16, Genl. Acts, Vol. IV.

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(Chapter VII.—Of the Duties of an Executor or Administrator.)

the executor or ¹ [administrator] shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India; and the value of such property situate in each Province shall be separately stated in such inventory;

and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

As to
property of,
and debts
owing to,
deceased

100. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

Expenses to
be paid
before all
debts.

101. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to
be paid next
after such
expenses.

102. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Wages for
certain
services to be
next paid,
and then
other debts.

103. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

Save as
aforesaid, all
debts to be
paid equally
and rateably.

104. Save as aforesaid, no creditor is to have a right of priority over another.

B " pay all
such equally
and r sed will
extend.

105. Debts

¹ The word "administrator" was substituted for the words "the person applying for administration" by s. 16 of the Probate and Administration Act, 1852 (6 of 1852), Genl. Acts, Vol. IV

105. Debts of every description must be paid before any legacy. Debts to be paid before legacies.
106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due. Executor or administrator not bound to pay legacies without indemnity.
107. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions, Abatement of general legacies.
- and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee. Executor not to pay one legatee in preference to another.
108. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement. Non-abatement of specific legacy when assets sufficient to pay debts.
109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder. Right under demonstrative legacy. When assets sufficient to pay debts and necessary expenses.
110. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts. Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his

(Chapter VII.—Of the Duties of an Executor or Administrator. Chapter VIII.—Of the Executor's Assent to a Legacy.)

assets, after payment of debts, are only 1,000 rupees. Of this sum, rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

Legacies treated as general for purpose of abatement.

111. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

CHAPTER VIII.¹

OF THE EXECUTOR'S ASSENT TO A LEGACY.

Assent necessary to complete legatee's title.

112. The assent of the executor is necessary to complete a legatee's title to his legacy.

Illustrations.

(a) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(b) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

Effect of executor's assent to specific legacy.

113. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Nature of assent.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Illustrations.

(a) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b) The

¹ The provisions in Chapter VIII as to an executor apply also to an administrator with the will annexed—see s. 148, *infra*.

(Chapter VIII.—Of the Executor's Assent to a Legacy.)

(b) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e) A person to whom a specific article has been bequeathed takes possession of it, and retains it without any objection on the part of the executor. His assent may be presumed.

114. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent. Condition of assent.

Illustrations.

(a) A bequeaths to B his lands of Sultanpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

115. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied. Assent of executor to his own legacy.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor. Implied assent.

Illustration.

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

116. The

Probate and Administration. [ACT V
(Chapter VIII.—Of the Executor's Assent to a
Legacy. Chapter IX.—Of the Payment and
Apportionment of Annuities.)

Effect of
executor's
assent.

116. The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustrations.

(a) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

Executor
when to
deliver
legacies.

117. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.¹

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

Commence-
ment of an-
nuity when
no time fixed
by will.

118. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

When an-
nuity, to be
paid
quarterly or
monthly,
first falls
due.

119. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due;
but

¹ The provisions in Chapter IX as to an executor apply also to an administrator with the will annexed—see s. 148, *infra*.

(Chapter IX.—Of the Payment and Apportionment of Annuities. Chapter X.—Of the Investment of Funds to provide for Legacies.)

but the executor shall not be bound to pay it till the end of the year.

120. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

Date of successive payments when first payment directed to be made within given time, or on day certain.

and, if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

Apportionment where annuitant dies between times of payment.

CHAPTER X.¹

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

121. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of sum bequeathed where legacy, not specific, given for life.

122. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Investment of general legacy, to be paid at future time.

The intermediate interest shall form part of the residue of the testator's estate.

Intermediate interest.

123. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased, or,

Procedure when no fund charged with or appropriated to, annuity.

if

¹ The provisions in Chapter X as to an executor apply also to an administrator with the will annexed—see s. 148, *infra*.

(Chapter VIII.—Of the Executor's Assent to a Legacy. Chapter IX.—Of the Payment and Apportionment of Annuities.)

Effect of executor's assent.

116. The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustrations.

(a) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

Executor when to deliver legacies.

117. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.¹

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

Commencement of annuity when no time fixed by will.

118. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

When annuity, to be paid quarterly or monthly, first falls due.

119. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but

¹ The provisions in Chapter IX as to an executor apply also to an administrator with the will annexed—see s. 148, *infra*.

(Chapter IX.—Of the Payment and Apportionment of Annuities. Chapter X.—Of the Investment of Funds to provide for Legacies.)

but the executor shall not be bound to pay it till the end of the year.

120. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

Date of successive payments when first payment directed to be made within given time, or on day certain.

and, if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

Apportionment where annuitant dies between times of payment.

CHAPTER X.¹

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES

121. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such security as the Court may, by any general rule to be made from time to time, authorize or direct, and the interest shall be paid to the legatee as the same shall accrue due.

Investment of sum . . .

122. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Investment of general legacy, to be paid at future time.

The intermediate interest shall form part of the residue of the testator's estate.

Intermediate interest.

123. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased, or,

Procedure when no fund charged with or appropriated to, annuity.

if

¹ The provisions in Chapter X as to an executor apply also to an administrator with the will annexed—see s. 148, *infra*.

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for Legacies.)

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

Transfer to
residuary
legatees of
contingent
bequest.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

Investment
of residue
bequeathed
for life, with
direction to
invest in
specified
securities.

125. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Time and
manner of
conversion
and invest-
ment.

126. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit;

Interest
payable until
investment.

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Procedure
where minor
entitled to
immediate
payment or
possession of
bequest, and
no direction
to pay to
person on his
behalf.

127. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate was, or letters of administration with the will annexed were, granted, to the
account

(Chapter XI.—Of the Produce and Interest of Legacies.)

account of the legatee, unless the legatee be a ward of the Court of Wards;

and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Legatee's title to produce of specific legacy.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(a) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(b) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(c) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age

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(Chapter XI.—Of the Produce and Interest of
Legacies.)

of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

Residuary
legatee's title
to produce of
residuary
fund.

129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations.

(a) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

Interest
when no time
fixed for pay-
ment of
general
legacy.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions.—(1) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

Interest
when time
fixed.

131. Where a time has been fixed for the payment of a general legacy, interest begins to run from the

(Chapter XI.—Of the Produce and Interest of Legacies. Chapter XII.—Of the refunding of Legacies.)

the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

132. The rate of interest shall be six per cent. Rate of interest.
per annum.

133. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity. No interest on arrears of annuity within first year after testator's death.

134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator. Interest on sum to be invested to produce annuity.

CHAPTER XII.¹

OF THE REFUNDING OF LEGACIES.

135. An executor who has paid a legacy under the order of a Judge is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies. Refund of legacy paid under Judge's orders.

136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies. No refund if paid voluntarily.

137. When the time prescribed by the will for the performance of a condition has elapsed, without the Refund when legacy becomes due on the

¹ The provisions in Chapter XII as to an executor apply also to an administrator with the will annexed—see s. 143, *infra*.

(Chapter XII.—Of the refunding of Legacies.)

performance
of condition
within fur-
ther time
allowed.

the condition having been performed, and the executor has thereupon, without fraud, distributed the assets, in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

When each
legatee com-
pelleable to
refund in
proportion.

138. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

Distribution
of assets.

139. Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution;

Creditor may
follow assets.

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

140. A

(Chapter XII.—Of the refunding of Legacies.)

140. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not

Creditor may call upon legatee to refund.

141. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund, under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When legatee, not satisfied or compelled to refund under section 140, cannot oblige one paid in full to refund

142. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

When unsatisfied legatee must first proceed against executor, if solvent.

143. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Limit to refunding of one legatee to another.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

144. The refunding shall, in all cases, be without interest.

Refunding to be without interest.

145. The

(Chapter XII.—Of the refunding of Legacies.
Chapter XIII.—Of the Liability of an Executor
or Administrator for Devastation.)

Residue after usual payments to be paid to residuary legatee. Transfer of assets from British India to executor or administrator in country of domicile for distribution.

145. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

¹ 145A. Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death,

and there have been a grant of probate or letters of administration in British India with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country,

the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 139 and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of,

may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

Liability of executor or administrator for devastation ;

146. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

¹ S. 145A was inserted by s. 16 of the Probate and Administration Act, 1890 (2 of 1890), Genl. Acts, Vol. IV.

(Chapter XIII.—Of the Liability of an Executor or Administrator for Devastation. Chapter XIV.—Miscellaneous.)

Illustrations.

(a) The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment

(b) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(c) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Liability for neglect to get in any part of property.

Illustrations.

(a) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(b) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

148. In Chapters VIII, IX, X and XII of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

Provisions applied to administrator with will annexed. Saving-clause.

149. Nothing herein contained shall—

(a) validate any testamentary disposition which would otherwise have been invalid;

(b) invalidate

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Probate and Administration.
(Chapter XIV.—Miscellaneous.)

- (b) invalidate any such disposition which would otherwise have been valid;
- (c) deprive any person of any right of maintenance to which he would otherwise have been entitled; or
- (d) affect the rights, duties and privileges of the Administrator-General of Bengal, Madras or Bombay.

Probate and administration in case of persons exempted from Succession Act, to be granted only under this Act.

150. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindú, Muhammadan, Buddhist or person exempted under section 332 of the ¹ Indian Succession Act, 1865, shall be instituted in any Court in British India except under this Act.

151. [*Repeal of portions of Act XXVII of 1860.*]
Repealed by the Succession Certificate Act, 1889 (VII of 1889).

Grant of probate or administration to supersede certificate under Act XXVII of 1860 or Bombay Regulation VIII of 1827.

152. The grant of probate or letters of administration under this Act in respect of any property shall be deemed to supersede any certificate previously granted in respect of the same property under ² * * Act ³ No. XXVII of 1860, or Bombay Regulation ⁴ No. VIII of 1827; and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such certificate regarding such property is pending, the person to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding :

Provided that, when any certificate is superseded under this section, all payments made to the holder
of

¹ Genl. Acts, Vol. I.

² The words "the said" were repealed by the Repealing and Amending Act, 1891 (12 of 1891) Certificate

³ Act 27 of 1860 has been repealed by the Succession Act, 1889 (7 of 1889), but *see* saving in s. 2 of the latter Act, Genl. Acts, Vol. IV.

⁴ Dom. Code.

1881.] *Probate and Administration.*
(Chapter XIV.—Miscellaneous.)

of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

153. [*Amendment of Court-fees Act, 1870 (VII of 1870).*] *Repealed by the Succession Certificate Act, 1889 (VII of 1889).*

154. The following amendments shall be made Amendment of Hindu Wills Act, 1870. in the ¹ Hindú Wills Act, 1870 (namely):—

- (a) for the portion of section 2 commencing with the words "sections one hundred and seventy-nine" and ending with the words "administrator with the will annexed," the words "and section one hundred and eighty-seven" shall be substituted;
- (b) the third clause of section 3 and the last clause of section 6 shall be repealed;
- (c) in section 6, for the words "one hundred and three and one hundred and eighty-two" the words "and one hundred and three" shall be substituted.

155. All grants of probate of the will or letters of administration to the estate of any deceased Hindú, Muhammadan or Buddhist, or any person exempted, under section 332 of the ² Indian Succession Act, 1865, which, before this Act comes into force, have been made in ³ British Burma, shall, whenever such grant would have been lawful if this Act had been in force, be deemed to have been made in accordance with law. Validation of grants of probate and administration made in Lower Burma.

156. [*Amendment of Indian Limitation Act, 1877 (XV of 1877).*] *Repealed by the Indian Limitation Act, 1908 (IX of 1908).*

⁴ 157. (1) When a grant of probate or letters of administration is revoked or annulled under ~~the Probate and Administration Act, 1881~~

¹ Genl. Acts Vol II.

² Genl. Acts, Vol. I.

³ Read now "Lower Burma," see the Burma Laws Act, 1898 (No. 7, Bur. Code).

⁴ S. 157 was added by the Probate and Administration Act, 1925 (No. 17, Genl. Acts, Vol. IV).

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Act, the person to whom the grant was forthwith deliver up the probate or the Court which made the grant.

(2) If such person wilfully and without cause omits so to deliver up the probate he shall be punished with fine which may be one thousand rupees, or with imprisonment may extend to three months, or with both

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

THE INDIAN SUCCESSION ACT, 1865,
(ACT X OF 1865.)

AS MODIFIED UP TO THE 1ST APRIL, 1909.

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S. 330, REPEALED	Act 24 of 1867.
S. 339 AND SCHEDULE REPEALED	" 7 of 1870.
S. 321, REPEALED IN PART	" 15 of 1877.
Ss. 235 A, 241 A, ADDED	} " 6 of 1881.
Ss. 244, 246, 250, AMENDED	
NEW s. 251, SUBSTITUTED	
S. 253, AMENDED	
Ss. 253 A, 253 B, 253 C, ADDED	
Ss. 254, 255, 259, AMENDED	} " 6 of 1889.
Ss. 234 (EXPLN), 244, 254, 255, 256, AMENDED	
NEW s. 277, SUBSTITUTED	
S. 238, AMENDED AND <i>Illustration</i> REPEALED	
S. 333 ADDED	
S. 326A, INSERTED	" 2 of 1890.
S. 3, REPEALED IN PART	" 12 of 1891.
S. 242, AMENDED	" 12 of 1891.
S. 3, REPEALED IN PART	" 6 of 1900.
S. 256, AMENDED	" 5 of 1902.
Ss. 157, 212, 241, 246, 250, AMENDED	} " 8 of 1903.
Ss. 212A, 216A, 277A, INSERTED	
APPLICATION EXTENDED	Act 21 of 1870, as amended by Act 5 of 1881, s. 154.
APPLICATION DISTRICTED	Act 21 of 1865, s. 8; Act 7 of 1901.

THE INDIAN SUCCESSION ACT, 1865.

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146. Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death.
147. Non-ademption of specific bequest of goods described as connected with certain place, by reason of removal.
148. When removal of thing bequeathed does not constitute ademption.
149. When thing bequeathed is a valuable to be received by testator from third person; and testator himself, or his representative receives it.
150. Change by operation of law of subject of specific bequest between date of will and testator's death.
151. Change of subject without testator's knowledge.
152. Stock specifically bequeathed, lent to third party on condition that it be replaced.
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154. Non-liability of executor to exonerate specific legatees.
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OF BEQUESTS OF THINGS DESCRIBED IN GENERAL TERMS.

158. Bequest of thing described in general terms.

PART XXIV.

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159. Bequest of interest or produce of Fund.

PART XXV.

OF BEQUESTS OF ANNUITIES.

160. Annuity created by will payable for life only, unless contrary intention appears by will.
 161. Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally, or where money bequeathed to be invested in purchase of annuity.
 162. Abatement of annuity.
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 166. No ademption by subsequent provision for legatee.

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167. Circumstances in which election takes place.
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170. Bequest for man's benefit how regarded for purpose of election.
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 172. Person taking in individual capacity under will, may in other character elect to take in opposition.
 173. When acceptance of benefit given by will constitutes election to take under will.
 174. Presumption arising from enjoyment by legatee for two years.
 175. Confirmation of bequest by act of legatee.
 176. When testator's representatives may call upon legatee to elect. Effect of non-compliance.
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183. Persons to whom probate cannot be granted.
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185. Separate probate of codicil discovered after grant of probate. Procedure when different executors appointed by codicil.
186. Accrual of representation to surviving executor.
187. Right as executor or legatee when established.
188. Effect of probate.
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196. Grant of administration to universal or residuary legatee.
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198. Grant of administration where no executor, nor re-
199. (
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201. Administration to widow unless Court see cause to exclude her.
202. Association with widow in administration.
203. Administration where no widow, or widow excluded. Proviso.
204. Title of kindred to administration.
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209. Probate of contents of lost or destroyed will.
210. Probate of copy where original exists.
211. Administration until will produced.

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212. Administration, with will annexed, to attorney of absent executor.
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214. Administration to attorney of absent person entitled to administer in case of intestacy.
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216. Administration during minority of several executors or residuary legatees.

217. Administration

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217. Administration for use and benefit of lunatic *ius habens*.

218. Administration *pendente lite*.

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219. Probate limited to purpose specified in will.

220. Administration with will annexed limited to particular purpose.

221. Administration limited to property in which person has beneficial interest.

222. Administration limited to suit.

223. Administration limited to purpose of becoming party to suit to be brought against administrator.

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225. Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

(d) *Grants with Exception.*

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235 Jurisdiction of District Judge in granting and revoking probates, etc.

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- 235A. Power to appoint Delegate of District Judge to deal with non-contentious cases.
- 236 District Judge's powers as to grant of probate and administration.
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239. When and how District Judge to interfere for protection of property.
240. When probate or administration may be granted by District Judge.
241. Disposal of application made to Judge of district in which deceased had no fixed abode.
- 241A. Probate and letters of administration may be granted by Delegate.
242. *Cancelment of probate or letters of administration.*
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- 245 In what cases translation of will to be annexed to petition.
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- 253C. Procedure where there is contention or District Delegate thinks probate or letters of administration should be refused in his Court.
- 254. Grant of probate to be under seal of Court.
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- 261. Procedure in contentious cases.
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OF EXECUTORS OF THEIR OWN WRONG.

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PART XXXIII.

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- 267. In respect of causes of action surviving deceased, and rents due at death.
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- 269. Power of executor or administrator to dispose of property.
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- 271. Powers of several executors or administrators exercisable by one.

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- 276. As to deceased's funeral.
- 277. Inventory and account.
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- 278. As to property of, and debts owing to, deceased.
- 279 Expenses to be paid before all debts.
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- 283. Application of moveable property to payments of debts, where domicile not in British India
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- 287. Abatement of general legacies.
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- 288. Non-abatement of specific legacy when assets sufficient to pay debts.
- 289. Right under demonstrative legacy, when assets sufficient to pay debts and necessary expenses.
- 290. Rateable abatement of specific legacies.
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OF THE EXECUTOR'S ASSENT TO A LEGACY.

- 292. Assent necessary to complete legatee's title.
- 293. Effect of executor's assent to specific legacy.
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- 294. Conditional assent.
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- 296. Effect of executor's assent.
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PART XXXVI.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

- 298. Commencement of annuity when no time fixed by will.
- 299. When annuity, to be paid quarterly or monthly, first falls due.
- 300. Dates of successive payments when first payment directed to be made within given time, or on day certain.
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PART XXXVII.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

- 301. Investment of sum bequeathed where legacy, not specific, given for life.
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- 303. Procedure when no fund charged with, or appropriated to, annuity.
- 304. Transfer to residuary legatee of contingent bequest.
- 305. Investment of residue bequeathed for life, without direction to invest in particular securities.
- 306. Investment of residue bequeathed for life, with direction to invest in specified securities.
- 307. Time and manner of conversion and investment.
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- 308. Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

PART XXXVIII.

OF THE PRODUCE AND INTEREST OF LEGACIES.

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- 310. Residuary legatee's title to produce of residuary fund.
- 311. Interest

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- 311. Interest when no time fixed for payment of general legacy.
- 312. Interest when time fixed.
- 313. Rate of interest.
- 314. No interest on arrears of annuity within first year after testator's death.
- 315. Interest on sum to be invested to produce annuity.

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OF THE REFUNDING OF LEGACIES.

- 316. Refund of legacy paid under Judge's orders.
- 317. No refund if paid voluntarily.
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- 319. When each legatee compellable to refund in proportion.
- 320. Distribution of assets.
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- 321. Creditor may call upon legatee to refund.
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- 323. When unsatisfied legatee must first proceed against executor, if solvent.
- 324. Limit to refunding of one legatee to another.
- 325. Refunding to be without interest.
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OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

- 327. Liability of executor or administrator for devastation;
- 328. For neglect to get in any part of property.

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- 294. Conditional assent.
- 295. Assent of executor to his own legacy.
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- 296. Effect of executor's assent.
- 297. Executor when to deliver legacies.

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- 307. Time and manner of conversion and investment.
Interest payable until investment.
- 308. Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

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- 310. Residuary legatee's title to produce of residuary fund.
- 311. Interest

SECTIONS.

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- 312. Interest when time fixed.
- 313. Rate of interest.
- 314. No interest on arrears of annuity within first year after testator's death.
- 315. Interest on sum to be invested to produce annuity.

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- 323. When unsatisfied legatee must first proceed against executor, if solvent
- 324. Limit to refunding of one legatee to another.
- 325. Refunding to be without interest.
- 326. Residue after usual payments to be paid to residuary legatee.
- 326A. Transfer of assets from British India to executor or administrator in country of domicile for distribution.

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- 327. Liability of executor or administrator for devastation;
- 328. For neglect to get in any part of property.

PART XLI.

PART XLI.

MISCELLANEOUS.

SECTIONS.

329. } [*Repealed.*]
330. }

331. Succession to property of Hindus, etc., and certain wills, intestacies and marriages not affected.

332. Power of Governor General in Council to exempt any race, sect or tribe in British India from operation of Act.

333. Surrender of revoked probate or letter of administration.

SCHEDULE. [*Repealed.*]

'ACT No. X OF 1865.'

[16th March, 1865.]

An Act to amend and define the Law of Intestate and Testamentary Succession in British India.

[As modified up to 1st April, 1909.]

WHEREAS it is expedient to amend and define the rules of law applicable to Intestate and Testamentary Succession in British India; It is enacted as follows :—

PART I.

PRELIMINARY.

1. This Act may be cited as the Indian Succession Act, 1865. Short title.

2. Except

¹ For the Statement of Objects and Reasons of the Bill which was passed into law as Act 10 of 1865, see Gazette of India, Extraordinary, dated 1st July 1864, No. 10, for Report of the Committee appointed in India, except

Vol. I.

It has been declared in force in the Hill District of Arakan, but not so as to affect Native Christians, by the Arakan Hill District Laws Regulation, 1874 (9 of 1874), s. 3, Bur. Code

Succession.
(Part I.—Preliminary.)

[ACT X

Act to constitute law of British India in cases of intestate or testamentary succession. Interpretation clause.

2. Except as provided by this Act or by any other law for the time being in force, the rules herein contained shall constitute the law of British India applicable to all cases of intestate or testamentary succession.

3. In this Act, unless there be something repugnant in the subject or context,—

Number.

Words importing the singular number include the plural; words importing the plural number include the singular; and word importing the male sex include females:

Gender.

"Person."

"Person" includes any company or association, or body of persons, whether incorporated or not:

"Year."

"Month."

"year" and "month" respectively mean a year and month reckoned according to the British calendar:

"Immoveable property."

"immoveable property" includes land, incorporeal tenements and things attached to the earth, or permanently fastened to anything which is attached to the earth;

"Moveable property."

"moveable property" property of every description except immoveable property;

"province

barred by the Spiti Regulation, 1900 (1 of 1900), E. the Hazárá District known as Tanawal) Regulation, 1900

of the Scheduled in force in the

Ranchi District, Manbhum, and district of Singhp. 504, and the I, p. 503. hills of Hindustan, gal and in the 0 (21 of 1870),

Act, 1900, s. 11.

As to the exemption of Parsis from portions of the Act, see the Parsi Intestate Succession Act, 1865 (21 of 1865), s. 8, *infra*, p. 574. For further exemption from the Act, see ss. 331 and 332, *infra*.

(Part I.—Preliminary.)

"province" includes any division of British India "Province." having a Court of the last resort.

¹ "British India" means the territories which are or may become vested in Her Majesty or her successors by the ² Statute 21 and 22 Vict., cap. 106 (*An Act for the better government of India*)³ * * *

"British India."

"District Judge" means the Judge of a principal Civil Court of original jurisdiction :

"District Judge."

"minor" means any person who shall not have completed the age of eighteen years, and "minority" means the status of such person :

"Minor," "Minority."

"will" means the legal declaration of the intention of the testator with respect to his property, which he desires to be carried into effect after his death :

"Will."

"codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will :

"Codicil."

"probate" means the copy of a will certified under the seal of a Court of competent jurisdiction with a grant of administration to the estate of the testator :

"Probate."

"Executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided :

"Executor."

"administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor :

"Administrator."

and,

¹ Cf. General Clauses Act, 1897 (10 of 1897), s. 3 (7), Genl. Acts, Vol. IV.

² See "The Government of India Act, 1858" (21 & 22 Vict., c. 106), Coll. Stats. Ind., Vol. II.

³ The words "other than the Settlement of Prince of Wales' Island, Singapore and Malacca" were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

⁴ For another definition of "minor," see the Indian Majority Act, 1875 (9 of 1875), s. 3, as amended by the Guardian and Wards Act, 1890 (8 of 1890), s. 52, Genl. Acts, Vol. II.

(Part I.—Preliminary. Part II.—Of Domicile.)

"Local Government."

and, in every part of British India to which this Act shall extend, "Local Government" shall mean the person authorized by law to administer executive government in such part; and

"High Court."

"High Court" shall mean the highest Civil Court of appeal therein¹ * * * *

Interests and powers not acquired nor lost by marriage.

4.² No person shall, by marriage, acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried.

PART II.

OF DOMICILE.

Law regulating succession to deceased person's immoveable and moveable property, respectively.

5. Succession to the immoveable property in British India of a person deceased is regulated by the law of British India, wherever he may have had his domicile at the time of his death.

Succession to the moveable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death.

Illustrations.

(a) A having his domicile in British India, dies in France, leaving moveable property in France, moveable property in England, and property, both moveable and immoveable, in British India. The succession to the whole is regulated by the law of British India.

(b) A,

¹ The words and figures "and, for the purposes of sections 242, 242A, 246A and 277A shall include the Court of the Recorder of Rangoon, in the definition of High Court" which were added by the Probate and Administration Act, 1875 (13 of 1875), were repealed by the Lower Burma Courts Act, 1900 (6 of 1900), s. 48, Bur. Code.

² S. 4 does not
1866, see s. 331, in
never to have appli
professed at the tim
Sikh or Jaina reli
(3 of 1874), s. 2, last paragraph, Genl. Acts, Vol. II.

(Part II.—Of Domicile.)

(b) A, an Englishman, having his domicile in France, dies in British India, and leaves property, both moveable and immoveable, in British India. The succession to the moveable property is regulated by the rules which govern, in France, the succession to the moveable property of an Englishman dying domiciled in France, and the succession to the immoveable property is regulated by the law of British India.

6. A person can only have one domicile for the purpose of succession to his moveable property.

One domicile only affects succession to moveables.

7. The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled :

Domicile of origin of person of legitimate birth.

or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death.

Illustration.

At the time of the birth of A, his father was domiciled in England. A's domicile of origin is in England, whatever may be the country in which he was born.

8. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

Domicile of origin of illegitimate child.

9. The domicile of origin prevails until a new domicile has been acquired.

Continuance of domicile of origin. Acquisition of new domicile.

10. A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

Explanation.—A man is not to be considered as having taken up his fixed habitation in British India merely by reason of his residing there in Her Majesty's civil or military service, or in the exercise of any profession or calling.

Illustrations.

(a) A, whose domicile of origin is in England, proceeds to British India, where he settles as a barrister or a merchant, intending to reside there during the remainder of his life. His domicile is now in British India.

(b) A, whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service. A has acquired a domicile in Austria.

(c) A,

(Part II.—Of Domicile.)

(c) A, whose domicile of origin is in France, comes to reside in British India under an engagement with the British Indian Government for a certain number of years. It is his intention to return to France at the end of that period. He does not acquire a domicile in British India.

(d) A, whose domicile is in England, goes to reside in British India for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He does not by such residence acquire a domicile in British India, however long the residence may last.

(e) A, having gone to reside in British India under the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in British India. A has acquired a domicile in British India.

(f) A, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in Calcutta, for many years in the hope of such political changes as may enable him to return with safety to Chandernagore. He does not by such residence acquire a domicile in British India.

(g) A, having come to Calcutta under the circumstances stated in the last preceding illustration, continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent. A has acquired a domicile in British India.

Special mode
of acquiring
domicile in
British India.

11. Any person may acquire a domicile in British India by making and depositing in some office in British India ¹(to be fixed by the Local Government) a declaration in writing under his hand of his desire to acquire such domicile : Provided that he shall have been resident in British India for one year immediately preceding the time of his making such declaration.

12. A

¹ For notifications issued under this section in the case of—

(1) Bombay, see Dom. R. & O., Vol. I.

(2) Burma, see p. 10 of the Bur. R. M.

(3) Central Provinces, see Cent. Provs. R. & O.

(4) U. P. of Agra and Oudh, see U. P. List of R. & O., Vol. I.

(5) Punjab, see Panj. R. & O.

(6) N. W. F. P., see Gazette of India, 1901, Pt. II, p. 1304.

(Part II.—Of Domicile.)

12. A person who is appointed by the Government of one country to be its ambassador, consul or other representative in another country does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with him as part of his family, or as a servant.

Domicile not acquired by residence as representative of foreign Government, or as part of his family.

13. A new domicile continues until the former domicile has been resumed, or another has been acquired.

Continuance of new domicile.

14. The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

Minor's domicile.

Exception.—The domicile of a minor does not change with that of his parent, if the minor is married or holds any office or employment in the service of Her Majesty, or has set up, with the consent of the parent, in any distinct business.

15. By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

Domicile acquired by woman on marriage.

16. The wife's domicile during the marriage follows the domicile of her husband.

Wife's domicile during marriage.

Exception.—The wife's domicile no longer follows that of her husband if they be separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

17. Except in the cases above provided for, a person cannot during minority acquire a new domicile.

Minor's acquisition of new domicile.

18. An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

Lunatic's acquisition of new domicile.

19. If a man dies leaving moveable property in British India, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of British India.

Succession to moveable property in British India in absence of proof of domicile elsewhere.

20. Kindred

(Part II.—Of Domicile.)

(c) A, whose domicile of origin is in France, comes to reside in British India under an engagement with the British Indian Government for a certain number of years. It is his intention to return to France at the end of that period. He does not acquire a domicile in British India.

(d) A, whose domicile is in England, goes to reside in British India for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He does not by such residence acquire a domicile in British India, however long the residence may last.

(e) A, having gone to reside in British India under the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in British India. A has acquired a domicile in British India.

(f) A, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in Calcutta, for many years in the hope of such political changes as may enable him to return with safety to Chandernagore. He does not by such residence acquire a domicile in British India.

(g) A, having come to Calcutta under the circumstances stated in the last preceding illustration, continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent. A has acquired a domicile in British India.

Special mode
of acquiring
domicile in
British India.

11. Any person may acquire a domicile in British India by making and depositing in some office in British India ¹(to be fixed by the Local Government) a declaration in writing under his hand of his desire to acquire such domicile : Provided that he shall have been resident in British India for one year immediately preceding the time of his making such declaration.

12. A

¹ For notifications issued under this section in the case of—

(1) Bombay, see Bom. R. & O., Vol. I.

(2) Burma, see p. 10 of the Bur. R. M.

(3) Central Provinces, see Cent. Provs. R. & O.

(4) U. P. of Agra and Oudh, see U. P. List of R. & O., Vol. I.

(5) Punjab, see Punj. R. & O.

(6) N. W. F. P., see Gazette of India, 1901, Pt. II, p. 1304.

(Part II.—Of Domicile.)

12. A person who is appointed by the Government of one country to be its ambassador, consul or other representative in another country does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with him as part of his family, or as a servant.

Domicile not acquired by residence as representative of foreign Government, or as part of his family.

13. A new domicile continues until the former domicile has been resumed, or another has been acquired.

Continuance of new domicile.

14. The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

Minor's domicile.

Exception.—The domicile of a minor does not change with that of his parent, if the minor is married or holds any office or employment in the service of Her Majesty, or has set up, with the consent of the parent, in any distinct business.

15. By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

Domicile acquired by woman on marriage.

16. The wife's domicile during the marriage follows the domicile of her husband.

Wife's domicile during marriage.

Exception.—The wife's domicile no longer follows that of her husband if they be separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

17. Except in the cases above provided for, a person cannot during minority acquire a new domicile.

Minor's acquisition of new domicile.

18. An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

Lunatic's acquisition of new domicile.

19. If a man dies leaving moveable property in British India, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of British India.

Succession to moveable property in British India in absence of proof of domicile elsewhere.

20. Kindred

(Part III.—Of Consanguinity.)

PART III.

OF CONSANGUINITY.

Kindred or
consanguini-
ty.

20. Kindred or consanguinity is the connexion or relation of persons descended from the same stock or common ancestor.

Lineal con-
sanguinity.

21. Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather and great-grandfather, and so upwards in the direct ascending line; or between a man, his son, grandson, great-grandson, and so downwards in the direct descending line.

Every generation constitutes a degree, either ascending or descending.

A man's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third.

Collateral
consanguini-
ty.

22. Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other.

For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased it is proper to reckon upwards from the person deceased to the common stock and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

Persons held
for purpose
of succession
to be similar-
ly related to
deceased.

23. For the purpose of succession, there is no distinction between those who are related to a person deceased through his father and those who are related to him through his mother;

nor between those who are related to him by the full blood, and those who are related to him by the half blood;

NOR

¹ Pt. III does not apply to Parsis, see the Parsi Intestate Succession Act, 1865 (21 of 1865), s. 8, Genl. Acts, Vol. I.

(Part III.—Of Consanguinity.)

nor between those who were actually born in his lifetime, and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.

24. In the annexed table of kindred the degrees are computed as far as the sixth, and are marked by numeral figures.

Mode of
computing
degrees of
kindred.

The person whose relatives are to be reckoned, and his cousin-german, or, first cousin, are, as shown in the table, related in the fourth degree; there being one degree of ascent to the father, and another to the common ancestor, the grandfather; and from him one of descent to the uncle, and another to the cousin-german; making in all four degrees.

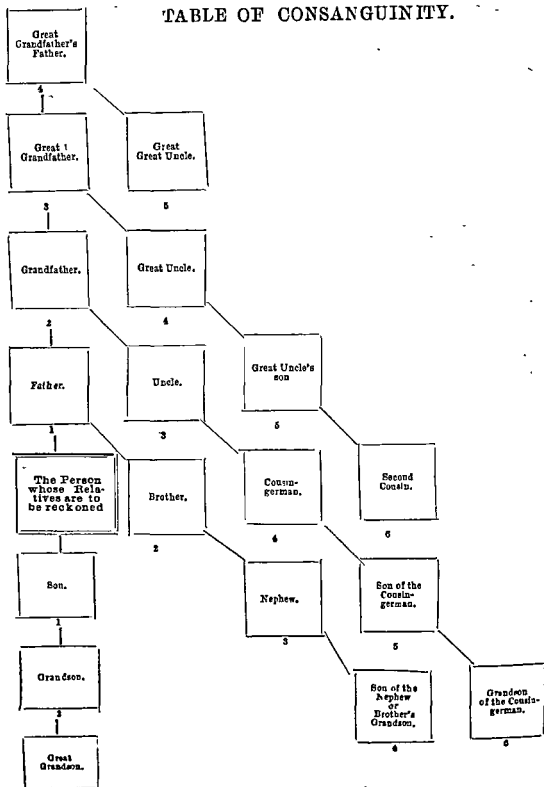
A grandson of the brother and a son of the uncle, *i.e.*, a great-nephew and a cousin-german, are in equal degree, being each four degrees removed.

A grandson of a cousin-german is in the same degree as the grandson of a great uncle, for they are both in the sixth degree of kindred.

TABLE

(Part III.—Of Consanguinity.)

TABLE OF CONSANGUINITY.



(Part IV.—Of Intestacy.)

PART IV.¹

OF INTESTACY.

25. A man is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

As to what property deceased considered to have died intestate.

Illustrations.

(a) A has left no will. He has died intestate in respect of the whole of his property.

(c) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.

(d) A has bequeathed 1,000*l.* to B and 1,000*l.* to the eldest son of C, and has made no other bequest; and has died leaving the sum of 2,000*l.* and no other property. C died before A without having ever had a son. A has died intestate in respect of the distribution of 1,000*l.*

26. Such property devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules herein prescribed.

Devolution of such property.

Explanation.—The widow is not entitled to the provision hereby made for her, if by a valid contract made before her marriage she has been excluded from her distributive share of her husband's estate.

27. Where the intestate has left a widow, if he has also left any lineal descendants one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules herein contained.

Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred.

If he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half

half

¹ Pt. IV (excepting s. 25) does not apply to Parsis, see the Parsi Intestate Succession Act, 1865 (21 of 1865), s. 8, Genl. Acts, Vol. I.

(Part IV.—Of Intestacy. Part V.—Of the Distribution of an Intestate's Property.)

half shall go to those who are of kindred to him, in the order and according to the rules herein contained.

If he has left none who are of kindred to him, the whole of his property shall belong to his widow.

Where intestate has left no widow, and where he has left no kindred.

28. Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules herein contained: and, if he has left none who are of kindred to him, it shall go to the Crown.

PART V.¹

OF THE DISTRIBUTION OF AN INTESTATE'S PROPERTY.

(a) *Where he has left lineal Descendants.*

Rules of distribution.

29. The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants are as follows:—

Where intestate has left child or children only.

30. Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there be only one, or shall be equally divided among all his surviving children.

Where intestate has left no child, but grandchild or grandchildren.

31. Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren, and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild if there be only one, or shall be equally divided among all his surviving grandchildren.

Illustrations.

(a) A has three children, and no more; John, Mary and Henry. They all die before the father, John leaving two children, Mary three, and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of

any

¹ Pt V does not apply to Parsis, see the Parsi Intestate Succession Act, 1865 (21 of 1865) s. 8, Genl. Acts, Vol. I.

(Part V.—Of the Distribution of an Intestate's Property.)

any deceased grandchild. Each of his grandchildren shall have one-ninth.

(b) But if Henry has died, leaving no child, then the whole is equally divided between the intestate's five grandchildren, the children of John and Mary.

(c) A has two children, and no more; John and Mary. John dies before his father, leaving his wife pregnant. Then A dies, leaving Mary surviving him, and in due time a child of John is born. A's property is to be equally divided between Mary and such posthumous child.

32 In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree.

33. If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree, of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him; and one of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and

Where intestate has left only great-grandchildren or remoter lineal descendants.

Where intestate leaves lineal descendants not all in same degree of kindred to him, and those through whom the more remote descend are dead.

one of such shares shall be allotted in respect of each of such deceased lineal descendants; and

the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.

(Part IV.—Of Intestacy. Part V.—Of the Distribution of an Intestate's Property.)

half shall go to those who are of kindred to him, in the order and according to the rules herein contained.

If he has left none who are of kindred to him, the whole of his property shall belong to his widow.

Where intestate has left no widow, and where he has left no kindred.

28. Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules herein contained: and, if he has left none who are of kindred to him; it shall go to the Crown.

PART V.¹

OF THE DISTRIBUTION OF AN INTESTATE'S PROPERTY.

(a) *Where he has left lineal Descendants.*

Rules of distribution.

29. The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants are as follows:—

Where intestate has left child or children only.

30. Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there be only one, or shall be equally divided among all his surviving children.

Where intestate has left no child, but grandchild or grandchildren.

31. Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren, and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild if there be only one, or shall be equally divided among all his surviving grandchildren.

Illustrations.

(a) A has three children, and no more; John, Mary and Henry. They all die before the father, John leaving two children, Mary three, and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of any

¹ Pt. V does not apply to Parsis, see the Parsi Intestate Succession Act, 1865 (21 of 1865) s. 8, Genl. Acts, Vol. I.

(Part V.—Of the Distribution of an Intestate's Property.)

any deceased grandchild. Each of his grandchildren shall have one-ninth.

(b) But if Henry has died, leaving no child, then the whole is equally divided between the intestate's five grandchildren, the children of John and Mary.

(c) A has two children, and no more; John and Mary. John dies before his father, leaving his wife pregnant. Then A dies, leaving Mary surviving him, and in due time a child of John is born. A's property is to be equally divided between Mary and such posthumous child.

32 In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree.

Where intestate has left only great-grandchildren or remoter lineal descendants.

33. If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree, of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him; and one of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and

Where intestate leaves lineal descendants not all in same degree of kindred to him, and those through whom the more remote descend are dead.

one of such shares shall be allotted in respect of each of such deceased lineal descendants; and

the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.

(Part V.—Of the Distribution of an Intestate's Property.)

Illustrations.

(a) A had three children, John, Mary and Henry; John died, leaving four children, and Mary died, leaving one, and Henry alone survived the father. On the death of A, intestate, one-third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.

(b) A left children of a d nine parts, one remaining one-ninth is equally divided between the two great-grand-children.

(c) A has three children, John, Mary and Henry. John dies leaving four children; and one of John's children dies leaving two children. Mary dies leaving one child. A afterwards dies intestate. One-third of his property is allotted to Henry, one third to Mary's child, and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grandchildren.

(b) Where the Intestate has left no lineal Descendants.

Rules of distribution where intestate has left no lineal descendants. Where intestate's father living.

34. Where an intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) are as follows:—

35. If the intestate's father be living, he shall succeed to the property.

36. If the intestate's father is dead, but the intestate's mother is living, and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.

Where intestate's father dead, but his mother, brothers and sisters living.

Illustration.

A dies intestate, surviving of the full blood, John and daughter of his mother, b take: one-fourth, each brother takes one-fourth, and Mary, the sister of half blood, takes one-fourth.

37. If

(Part V.—Of the Distribution of an Intestate's Property.)

37. If the intestate's father is dead, but the intestate's mother is living, and if any brother or sister and the child or children of any brother or sister who may have died in the intestate's lifetime are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Where intestate's father dead and his mother, a brother or sister, and children of any deceased brother or sister, living.

Illustration.

A, the intestate, leaves his mother, his brothers John and Henry, and also one child of a deceased sister Mary, and two children of George, a deceased brother of the half blood who was the son of his father but not of his mother. The mother takes one-fifth, John and Henry each take one-fifth, the child of Mary takes one-fifth, and the two children of George divide the remaining one-fifth equally between them.

38. If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Where intestate's father dead and his mother and children of any deceased brother or sister living.

Illustration.

A, the intestate, leaves no brother or sister, but leaves his mother and one child of a deceased sister Mary, and two children of a deceased brother George. The mother takes one-third, the child of Mary takes one-third, and the children of George divide the remaining one-third equally between them.

39. If the intestate's father is dead, but the intestate's mother is living, and there is neither brother, nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.

Where intestate's father dead, but his mother living and no brother, sister, nephew or niece.

40. Where

(Part V.—Of the Distribution of an Intestate's Property.)

Where intestate has left neither lineal descendant, nor father nor mother.

40. Where the intestate has left neither lineal descendant, nor father, nor mother, the property is divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Where intestate has left neither lineal descendant, nor parent, nor brother, nor sister.

41. If the intestate left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

Illustration.

(a) A, the intestate, has left a grandfather and a grandmother and no other relative standing in the same or a nearer degree of kindred to him. They, being in the second degree, will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate, uncles and aunts being only in the third degree.

(b) A, the intestate, has left a great-grandfather or great-grandmother, and uncles and aunts, and no other relative standing in the same or a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(c) A, the intestate, left a great-grandfather, an uncle and a nephew, but no relative standing in a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(d) Ten children of one brother or sister of the intestate, and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him. They shall each take one-eleventh of the property.

Children's advancements not brought into hotchpot.

42. Where a distributive share in the property of a person who has died intestate shall be claimed by a child, or any descendant of a child of such person, no money or other property which the intestate may during his life have paid, given or settled to, or for the advancement of the child by whom or by whose descendant the claim is made, shall be taken into account in estimating such distributive share.

Part VI.—Of the Effect of Marriage and Marriage-settlements on Property. Part VII.—Of Wills and Codicils.)

PART VI.

OF THE EFFECT OF MARRIAGE AND MARRIAGE-SETTLEMENTS ON PROPERTY.

43. ¹ The husband surviving his wife has the same rights in respect of her property, if she die intestate, as the widow has in respect of her husband's property if he die intestate. Rights of widower and widow respectively.

44. If a person whose domicile is not in British India marries in British India a person whose domicile is in British India, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage. Effect of marriage between person domiciled and one not domiciled in British India.

45. The property of a minor may be settled in contemplation of marriage provided the settlement be made by the minor with the approbation of the minor's father, or, if he be dead or absent from British India, with the approbation of the High Court. Settlement of minor's property in contemplation of marriage.

PART VII.²

OF WILLS AND CODICILS.

46. Every person of sound mind and not a minor may dispose of his property by will. Person capable of making wills.

Explanation

¹ S. 43 does not apply to Parsis, see the Parsi Intestate Succession Act, 1865 (21 of 1865), s. 8, Genl. Acts, Vol. I.

² Of Pt. VII, ss. 46, 48 and 49 apply to the wills of Hindus, Jains, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay, see the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

(Part VII.—Of Wills and Codicils.)

Explanation 1.—A married woman may dispose by will of any property which she could alienate by her own act during her life.¹

Explanation 2.—Persons who are deaf or dumb or blind are not thereby incapacitated for making a will if they are able to know what they do by it.

Explanation 3.—One who is ordinarily insane may make a will during an interval in which he is of sound mind.

Explanation 4.—No person can make a will while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause that he does not know what he is doing.

Illustrations.

(a) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his will. A cannot make a valid will.

(b) A executes an instrument purporting to be his will, but he does not understand the nature of the instrument nor the effect of its provisions. This instrument is not a valid will.

(c) A, being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes a will. This is a valid will.

Testamentary guardian. 47. A father, whatever his age may be, may by will appoint a guardian or guardians for his child during minority.

Will obtained by fraud, coercion or importunity. 48. A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

Illustrations.

(a) A falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act and thereby induces the testator to make a will in his

¹ As to property which a married woman may dispose of by her own act, see the Married Woman's Property Act, 1871 (3 of 1871), Genl. Acts, Vol. II, and cf. s. 4 of this Act.

(Part VII.—Of Wills and Codicils.)

his, A's favour; such will has been obtained by fraud, and is invalid.

(b) A, by fraud and deception, prevails upon the testator to bequeath a legacy to him. The bequest is void.

(c) A, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment.

(d) A threatens to shoot B, or to burn his house, or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B in consequence makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(e) A, being of sufficient intellect, if undisturbed by the influence of others, testifies a will in the presence of B, under the control of B that he is
B. It appears that
fear of B. The will is invalid.

(f) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a will of a certain purport and does so merely to purchase peace and in submission to B. The will is invalid.

(g) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his will in the manner recommended by B. The will is not rendered invalid by the intercession and persuasion of B.

(h) A, with a view to obtaining a legacy from B, pays him attention and flatters him and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

49. A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.

Will may be
revoked or
altered.

(Part VIII.—Of the Execution of unprivileged Wills. Part IX.—Of privileged Wills.)

PART VIII¹.

OF THE EXECUTION OF UNPRIVILEGED WILLS.

Execution of unprivileged wills.

50. Every testator, not being a soldier employed in an expedition, or engaged in actual warfare, or a mariner at sea, must execute his will according to the following rules :—

First.—The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

Second.—The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

Third.—The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will, in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person ; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

Incorporation of papers by reference.

51. If a testator, in a will or codicil duly attested, refers to any other document then actually written as expressing any part of his intentions, such document shall be considered as forming a part of the will or codicil in which it is referred to.

PART IX.

OF PRIVILEGED WILLS.

Privileged will.

52. Any soldier being employed in an expedition, or engaged in actual warfare, or any mariner being at

¹ Pt. VIII applies to the wills of Hindus, Jains, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay—see the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

(Part IX.—Of privileged Wills.)

at sea may, if he has completed the age of eighteen years, dispose of his property by a will made as is mentioned in the 53rd section. Such wills are called privileged wills.

Illustrations.

(a) A, the surgeon of a regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged will.

(b) A is at sea in a merchant-ship, of which he is the purser. He is a mariner, and being at sea, can make a privileged will.

(c) A, a soldier serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged will.

(d) A, a mariner of a ship, in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, in the sense of the words used in this clause, a mariner at sea, and can make a privileged will.

(e) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged will.

(f) A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged will.

53. Privileged wills may be in writing, or may be made by word of mouth.

The execution of them shall be governed by the following rules :—

First.—The will may be written wholly by the testator, with his own hand. In such case it need not be signed nor attested.

Second.—It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

Third.—If the instrument purporting to be a will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his will, if it be shown that it was written by the testator's directions, or that he recognised it as his will.

Mode of making, and rules for executing, privileged wills.

If

(Part IX.—Of privileged Wills. Part X.—Of the Attestation, Revocation, Alteration and Revival of Wills.)

If it appear on the face of the instrument that the execution of it in the manner intended by him was not completed, the instrument shall not by reason of that circumstance be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

Fourth.—If the soldier or mariner shall have written instructions for the preparation of his will, but shall have died before it could be prepared and executed, such instructions shall be considered to constitute his will.

Fifth.—If the soldier or mariner shall, in the presence of two witnesses, have given verbal instruction for the preparation of his will, and they shall have been reduced into writing in his lifetime, but he shall have died before the instrument could be prepared and executed, such instructions shall be considered to constitute his will, although they may not have been reduced into writing in his presence, nor read over to him.

Sixth.—Such soldier or mariner as aforesaid may make a will by word of mouth by declaring his intentions before two witnesses present at the same time.

Seventh.—A will made by word of mouth shall be null at the expiration of one month after the testator shall have ceased to be entitled to make a privileged will.

PART X¹.

OF [THE ATTESTATION, REVOCATION, ALTERATION AND REVIVAL OF WILLS.

54. A will shall not be considered as insufficiently attested by reason of any benefit thereby given

Effect of gift to attesting witnesses.

¹ Of Pt. X, ss. 55 and 57 to 60 (both inclusive) apply to the wills of Hindus, Jains, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay—see the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

(Part X.—Of the Attestation, Revocation, Alteration and Revival of Wills)

given, either by way of bequest or by way of appointment to any person attesting it, or to his or her wife or husband :

but the bequest or appointment shall be void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them.

Explanation.—A legatee under a will does not lose his legacy by attesting a codicil which confirms the will.

55 No person, by reason of interest in, or of his being an executor of, a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.

Witness not disqualified by interest or by being executor.

56. Every will shall be revoked by the marriage of the maker, except a will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not, in default of such appointment, pass to his or her executor or administrator, or to the person entitled in case of intestacy.

Revocation of will by testator's marriage.

Explanation.—Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.

Power of appointment defined.

57. No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged will is herein before required to be executed, or by the burning, tearing or otherwise destroying the same by the testor or by some person in his presence and by his direction, with the intention of revoking the same.

Revocation of unprivileged will or codicil.

(Part X.—Of the Attestation, Revocation, Alteration and Revival of Wills.)

Illustrations.

(a) A has made an unprivileged will. Afterwards A makes another unprivileged will which purports to revoke the first. This is a revocation.

(b) A has made an unprivileged will. Afterwards, A, being entitled to make a privileged will, makes a privileged will which purports to revoke his unprivileged will. This is a revocation.

Effect of
obliteration,
interlinea-
tion or al-
teration in
unprivileged
will.

58. No obliteration, interlineation or other alteration made in any unprivileged will after the execution thereof shall have any effect except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; save that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

Revocation
of privileged
will or codi-
cil.

59. A privileged will or codicil may be revoked by the testator by an unprivileged will or codicil, or by any act expressing an intention to revoke it and accompanied with such formalities as would be sufficient to give validity to a privileged will, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Explanation.—In order to the revocation of a privileged will or codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged will, it is not necessary that the testator should at the time of doing that act be in a situation which entitles him to make a privileged will.

(Part X.—Of the Attestation, Revocation, Alteration and Revival of Wills. Part XI.—Of the Construction of Wills.)

60. No unprivileged will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same;

Revival of unprivileged will.

and when any will or codicil, which shall be partly revoked and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

Extent of revival of will or codicil partly revoked and afterwards wholly revoked.

PART XI.

OF THE CONSTRUCTION OF WILLS.

61. It is not necessary that any technical words or terms of art shall be used in a will, but only that the wording shall be such that the intentions of the testator can be known therefrom.

Wording will.

62. For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a Court must inquire into every material fact relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

Inquiries to determine questions as to object or subject of will.

Illustrations.

(a) A, by his will, bequeaths 1,000 rupees to his eldest son or to his youngest grandchild, or to his cousin Mary. A Court may

may

may make inquiry in order to ascertain to what person the description in the will applies.

(b) A, by his will, leaves to B "his estate called Black Acre." It may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest; that is to say, what estate of the testator's is called Black Acre.

(c) A, by his will, leaves to B "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

Misnomer or
misdescription
of
object.

63. Where the words used in the will to designate or describe a legatee or a class of legatees sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.

A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

(a) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has a only brother named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(b) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother named John, whose first son is named Thomas, and whose second son is named William. Thomas shall have the legacy.

(c) The testator bequeaths his property "to A and B, the natural child, but has a request to A and B

(d) The testator gives his residuary estate to be divided among "his seven children, and proceeding to enumerate them, mentions six names only. This omission shall not prevent the seventh child from taking a share with the others.

(c) The te
to "his six gr
their Christia
altogether.
share with the others.

(f) The testator bequeaths "1,000 rupees to each of the three children of A." At the date of the will A has four children.

Each

(Part XI.—Of the Construction of Wills.)

Each of these four children shall, if he survives the testator, receive a legacy of 1,000 rupees.

64. Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context. When words may be supplied.

Illustration.

The testator gives a legacy of "five hundred" to his daughter A, and a legacy of "five hundred rupees" to his daughter B. A shall take a legacy of five hundred rupees.

65. If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect. Rejection of erroneous particulars in description of subject.

Illustrations.

(a) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, but had no marsh-lands in the occupation of X. The words "in the occupation of X" shall be rejected as erroneous, and the marsh-lands of the testator lying in L shall pass by the bequest.

(b) The testator bequeaths to A "his zamindari of Rampur." He had an estate at Rampur, but it was a taluq and not a zamindari. The taluq passes by this bequest.

66. If the will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply. When part of description may not be rejected as erroneous.

Explanation.—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under the 65th section are to be considered as struck out of the will.

Illustrations.

(Part XI.—Of the Construction of Wills.)

may make inquiry in order to ascertain to what person the description in the will applies.

(b) A, by his will, leaves to B "his estate called Black Acre." It may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest; that is to say, what estate of the testator's is called Black Acre.

(c) A, by his will, leaves to B "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

Misnomer or
misdescription
of
object.

63. Where the words used in the will to designate or describe a legatee or a class of legatees sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.

A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

Illustrations.

(a) "I give to my second son, the second son of his brother who has a second son whose name is William. William shall have the legacy."

(b) "I give to my second son of his brother whose father named John, the second son is named V."

(c) "I give to my son, who is property to A and B, the illegitimate child, but has B. The bequest to A and B illegitimate."

(d) The testator gives his residuary estate to be divided among "his seven children, and proceeding to enumerate them, mentions six names only. This omission shall not prevent the seventh child from taking a share with the others.

(e) The testator, having named his six grandchildren, their Christian names, altogether. The one who share with the others.

(f) The testator bequeaths "1,000 rupees to each of the three children of A." At the date of the will A has four children.

Each

(Part XI.—Of the Construction of Wills.)

Each of these four children shall, if he survives the testator, receive a legacy of 1,000 rupees.

64. Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context. When words may be supplied.

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The testator gives a legacy of "five hundred" to his daughter A, and a legacy of "five hundred rupees" to his daughter B. A shall take a legacy of five hundred rupees.

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Illustrations.

(a) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, but had no marsh-lands in the occupation of X. The words "in the occupation of X" shall be rejected as erroneous, and the marsh-lands of the testator lying in L shall pass by the bequest.

(b) The testator bequeaths to A "his zamindari of Rampur." He had an estate at Rampur, but it was a taluq and not a zamindari. The taluq passes by this bequest.

66. If the will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply. When part of description may not be rejected as erroneous.

Explanation—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under the 65th section are to be considered as struck out of the will.

Illustrations.

(Part XI.—Of the Construction of Wills.)

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(a) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest shall be considered as limited to such of the testator's marsh-lands lying in L as were in the occupation of X.

(b) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X, comprising 1,000 bighas of land." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The measurement is wholly inapplicable to the marsh-lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the will, and such of the testator's marsh-lands lying in L as were in the occupation of X shall alone pass by the bequest.

Extrinsic evidence admissible in case of latent ambiguity.

67. Where the words of the will are unambiguous, but it is found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

Illustrations.

(a) A man, having two cousins of the name of Mary, bequeaths a sum of money to "his cousin Mary." It appears that

"his cousin Mary" is the only one of the two cousins of the name of Mary who was living at the time of the testator's death.

(b) A, by his will, leaves to B "his estate called Sultanpur Khurd." It turns out that he had two estates called Sultanpur Khurd. Evidence is admissible to show which estate was intended.

Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency.

68. Where there is an ambiguity or deficiency on the face of the will no extrinsic evidence as to the intentions of the testator shall be admitted.

Illustrations.

(a) A man has an aunt Caroline and a cousin Mary, and has no aunt of the name of Mary. By his will he bequeaths 1,000 rupees

(Part XI.—Of the Construction of Wills.)

rupees to "his aunt Caroline " and 1,000 rupees to "his cousin Mary," and afterwards bequeaths 2,000 rupees to "his before-mentioned aunt Mary." There is no person to whom the description given in the will can apply, and evidence is not admissible to show who was meant by "his before-mentioned aunt Mary." The bequest is therefore void for uncertainty under the 76th section.

(b) A bequeaths 1,000 rupees to leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(c) A bequeaths to B rupees, or "his estate of " Evidence is not admissible to show what sum or what estate the testator intended to insert.

69. The meaning of any clause in a will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other; and for this purpose a codicil is to be considered as part of the will.

Meaning of clause to be collected from entire will.

Illustrations.

(a) The testator gives to B a specific fund or property at the death of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his decease in B; it appearing from the bequest to B that the testator meant to use in a restricted sense the words in which he describes what he gives to A.

(b) Where a testator having an estate, one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his will bequeaths Black Acre to B: the latter bequest is to be read as an exception out of the first as if he had said "I give Black Acre to B, and all the rest of my estate to A."

70. General words may be understood in a restricted sense where it may be collected from the will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the will that the testator meant to use them in such wider sense.

When words may be understood in restricted sense, and when in sense wider than usual.

Illustrations.

(Part XI.—Of the Construction of Wills.)

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(a) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest shall be considered as limited to such of the testator's marsh-lands lying in L as were in the occupation of X.

(b) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X, comprising 1,000 bighas of land." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The measurement is wholly inapplicable to the marsh-lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the will, and such of the testator's marsh-lands lying in L as were in the occupation of X shall alone pass by the bequest.

Extrinsic evidence admissible in case of latent ambiguity.

67. Where the words of the will are unambiguous, but it is found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

Illustrations.

(a) A man, having two cousins of the name of Mary, bequeaths a sum of money to "his cousin Mary." It appears that there are two persons, each answering the description in the will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(b) A, by his will, leaves to B "his estate called Sultanpur Khurd." It turns out that he had two estates called Sultanpur Khurd. Evidence is admissible to show which estate was intended.

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Illustrations.

(a) A man has an aunt Caroline and a cousin Mary, and has no aunt of the name of Mary. By his will he bequeaths 1,000 rupees

(Part XI.—Of the Construction of Wills.)

rupees to "his aunt Caroline " and 1,000 rupees to "his cousin Mary," and afterwards bequeaths 2,000 rupees to "his before-mentioned aunt Mary." There is no person to whom the description given in the will can apply, and evidence is not admissible to show who was meant by "his before-mentioned aunt Mary." The bequest is therefore void for uncertainty under the 76th section.

(b) A bequeaths 1,000 rupees to leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

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Meaning of clause to be collected from entire will.

Illustrations.

(a) The testator gives to B a specific fund or property at the death of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his decease in B; it appearing from the bequest to B that the testator meant to use in a restricted sense the words in which he describes what he gives to A.

(b) Where a testator having an estate, one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his will bequeaths Black Acre to B: the latter bequest is to be read as an exception out of the first as if he had said "I give Black Acre to B, and all the rest of my estate to A."

70. General words may be understood in a restricted sense where it may be collected from the will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the will that the testator meant to use them in such wider sense.

When words may be understood in restricted sense, and when in sense wider than usual.

Illustrations.

(Part XI.—Of the Construction of Wills.)

Illustrations.

(a) A testator gives to A "his farm in the occupation of B," and to C "all his marsh-lands in L." Part of the farm in the occupation of B consists of marsh-lands in L, and the testator also has other marsh-lands in L. The general words, "all his marsh-lands in L," are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh-lands in L.

(b) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons and chest of clothes, and to his friend A (a shipmate) his red box, clasp-knife and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(c) A, by his will, bequeathed to B all his house-hold furniture, plate, linen, china, books, pictures and all other goods of whatever kind; and afterwards bequeathed to B a specified part of his property. Under the first bequest B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

Which of two possible constructions preferred.

71. Where a clause is susceptible of two meanings according to one of which it has some effect, and according to the other it can have none, the former is to be preferred.

No part rejected, if it can be reasonably construed. Interpretation of words repeated in different parts of will.

72. No part of a will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

73. If the same words occur in different parts of the same will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

Testator's intention to be effectuated as far as possible.

74. The intention of the testator is not to be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

Illustration.

The testator by a will made on his death-bed bequeathed all his property for C D for life and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent, because the gift to the hospital is void under the 105th section, but it shall take effect so far as regards the gift to C. D.

75. Where

(Part XI.—Of the Construction of Wills.)

75. Where two clauses or gifts in a will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

The last of two irreconcilable clauses prevails.

Illustrations.

(a) The testator by the first clause of his will leaves his estate of Ramnagar "to A," and by the last clause of his will leaves it "to B and not to A." B shall have it.

(b) If a man at the commencement of his will gives his house to A, and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B, the latter disposition shall prevail.

76. A will or bequest not expressive of any definite intention is void for uncertainty.

Will or bequest void for uncertainty.

Illustration.

If a testator says—"I bequeath goods to A;" or "I bequeath to A;" or "I leave to A all the goods mentioned in a schedule," and no schedule is found; or "I bequeath 'money,' 'wheat,' 'oil,' " or the like, without saying how much; this is void.

77. The description contained in a will of property the subject of gift shall, unless a contrary intention appear by the will, be deemed to refer to and comprise the property answering that description at the death of the testator.

Words describing subject refer to property answering description at testator's death.

78. Unless a contrary intention shall appear by the will, a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power;

Power of appointment executed by general bequest.

and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power.

79. Where property is bequeathed to or for the benefit of certain objects as a specified person shall

Implied gift to objects of

(Part XI.—Of the Construction of Wills.)

power in
default of
appointment.

shall appoint, or for the benefit of certain objects in such proportions as a specified person shall appoint, and the will does not provide or the event of no appointment being made; if the power given by the will be not exercised, the property belongs to all the objects of the power in equal shares.

Illustration.

(a) A, by his will, bequeaths a fund to his wife, for her life, children
ow dies
shall be
among the children.

Bequest to
"heirs," etc.,
of particular
person with-
out qualify-
ing terms.

80. Where a bequest is made to the "heirs" or "right heirs," or "relations," or "nearest relations" or "family" or "kindred" or "nearest of kin," or "next-of-kin" of a particular person, without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property.

Illustrations.

(a) A leaves his property "to his own nearest relations." The property goes to those who would be entitled to it if A had died intestate, leaving assets for the payment of his debts independently of such property.

(b) A bequeaths 10,000 rupees "to B for his life," and after the death of B to his own right heirs." The legacy after B's death belongs to those who would be entitled to it if it had formed part of A's unbequeathed property.

(c) A leaves his property to B; but if B dies before him, to B's next-of-kin: B dies before A; the property devolves as if it had belonged to B, and he had died intestate, leaving assets for the payment of his debts independently of such property.

(d) A leaves 10,000 rupees "to B for his life, and after his decease to the heirs of C." The legacy goes as if it had belonged

(Part XI.—Of the Construction of Wills.)

belonged to C, and he had died intestate, leaving assets for the payment of his debts independently of the legacy.

81. Where a bequest is made to the "representatives," or "legal representatives" or "personal representatives," or executors or administrators" of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such persons and he had died intestate in respect of it.

Bequest to "representatives," etc., of particular person.

Illustration.

A bequest is made to the "legal representatives" of A. A has died intestate and insolvent. B is his administrator. B is entitled to receive the legacy, and shall apply it in the first place to the discharge of such part of A's debts as may remain unpaid: if there be any surplus, B shall pay it to those persons who at A's death would have been entitled to receive any property of A's which might remain after payment of his debts, or to the representatives of such persons.

82. Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him.

Bequest without words of limitation.

83. Where property is bequeathed to a person, with a bequest in the alternative to another person or to a class of persons; if a contrary intention does not appear by the will, the legatee first named shall be entitled to the legacy if he be alive at the time when it takes effect; but if he be then dead the person or class of persons named in the second branch of the alternative shall take the legacy.

Bequest in alternative.

Illustrations.

(a) A bequest is made to A or to B. A survives the testator. B takes nothing.

(b) A bequest is made to A or to B. A dies after the date of the will, and before the testator. The legacy goes to B.

(c) A bequest is made to A or to B. A is dead at the date of the will. The legacy goes to B.

(d) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(e) Property

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power in
default of
appointment.

shall appoint, or for the benefit of certain objects in such proportions as a specified person shall appoint, and the will does not provide or the event of no appointment being made; if the power given by the will be not exercised, the property belongs to all the objects of the power in equal shares.

Illustration.

(a) A, by his will, bequeaths a fund to his wife, for her life, and directs that at her death it shall be divided among his children in such proportions as she shall appoint. The widow dies without having made any appointment. The fund shall be divided equally among the children.

Bequest to
"heirs," etc.,
of particular
person with-
out qualify-
ing terms.

80. Where a bequest is made to the "heirs" or "right heirs," or "relations," or "nearest relations" or "family" or "kindred" or "nearest of kin," or "next-of-kin" of a particular person, without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property.

Illustrations.

(a) A leaves his property "to his own nearest relations." The property goes to those who would be entitled to it if A had died intestate, leaving assets for the payment of his debts independently of such property.

(b) A bequeaths 10,000 rupees "to B for his life," and after the death of B to his own right heirs." The legacy after B's death belongs to those who would be entitled to it if it had formed part of A's unbequeathed property.

(c) A leaves his property to B; but if B dies before him, to B's next-of-kin: B dies before A; the property devolves as if it had belonged to B, and he had died intestate, leaving assets for the payment of his debts independently of such property.

(d) A leaves 10,000 rupees "to B for his life, and after his decease to the heirs of C." The legacy goes as if it had belonged

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belonged to C, and he had died intestate, leaving assets for the payment of his debts independently of the legacy.

81. Where a bequest is made to the "representatives," or "legal representatives" or "personal representatives," or executors or administrators" of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such persons and he had died intestate in respect of it.

Bequest to "representatives," etc., of particular person.

Illustration.

A bequest is made to the "legal representatives" of A. A has died intestate and insolvent. B is his administrator. B is entitled to receive the legacy, and shall apply it in the first place to the discharge of such part of A's debts as may remain unpaid: if there be any surplus, B shall pay it to those persons who at A's death would have been entitled to receive any property of A's which might remain after payment of his debts, or to the representatives of such persons.

82. Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him.

Bequest without words of limitation.

83. Where property is bequeathed to a person, with a bequest in the alternative to another person or to a class of persons; if a contrary intention does not appear by the will, the legatee first named shall be entitled to the legacy if he be alive at the time when it takes effect; but if he be then dead the person or class of persons named in the second branch of the alternative shall take the legacy.

Bequest in alternative.

Illustrations.

(a) A bequest is made to A or to B. A survives the testator. B takes nothing.

(b) A bequest is made to A or to B. A dies after the date of the will, and before the testator. The legacy goes to B.

(c) A bequest is made to A or to B. A is dead at the date of the will. The legacy goes to B.

(d) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(e) Property

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(e) Property is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator the bequest to A's nearest of kin takes effect.

(f) Property is bequeathed to A for life, and after his death to B or his heirs. A and B survive the testator. B dies in A's lifetime. Upon A's death the bequest to the heirs of B takes effect.

(g) Property is bequeathed to A for the life, and after his death to B or his heirs. B dies in the testator's lifetime. A survives the testator. Upon A's death the bequest to the heirs of B takes effect.

Effect of words describing a class added to bequest to person.

84. Where property is bequeathed to a person, and words are added which describe a class of persons but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the will.

Illustrations.

(a) A bequest is made—

- to A and his children,
- to A and his children by his present wife,
- to A and his heirs,
- to A and the heirs of his body.
- to A and the heirs male of his body,
- to A and the heirs female of his body,
- to A and his issue,
- to A and his family,
- to A and his descendants,
- to A and his representatives,
- to A and his personal representatives,
- to A, his executors and administrators,

in each of the-e cases, A takes the whole interest which the testator had in the property.

(b) A bequest is made to A and his brothers. A and his brothers are jointly entitled to the legacy.

(c) A bequest is made to A for life, and after his death to his issue. At the death of A the property belongs in equal shares to all persons who shall then answer the description of issue of A.

85. Where

(Part XI.—Of the Construction of Wills.)

85. Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

Bequest to class of persons under general description only.
Construction of terms.

86. The word "children" in a will applies only to lineal descendants in the first degree;

the word "grand-children" applies only to lineal descendants in the second degree of the person whose "children" or "grand-children", are spoken of.

the words "nephews" and "nieces" apply only to children of brothers or sisters ;

the words "cousins," or "first cousins," or "cousins-german," apply only to children or brothers or of sisters of the father or mother of the person whose "cousins," or "first cousins," or "cousins-german," are spoken of ;

the words "first cousins once removed" apply only to children of cousins-german, or to cousins-german of a parent of the person whose "first cousin once removed" are spoken of ;

the words "second cousins" apply only to grand-children of brothers or of sisters of the grand-father or grand-mother of the person whose "second cousins" are spoken of ;

the words "issue" and "descendants" apply to all lineal descendants whatever of the person whose "issue" or "descendants" are spoken of.

Words expressive of collateral relationship apply alike to relatives of full and of half-blood.

All words expressive of relationship apply to a child in the womb who is afterwards born alive.

87. In the absence of any intimation to the contrary in the will, the term "child" son or "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or, where there is no such legitimate relative, a person who has acquired, at the date of the will, the reputation of being such relative.

Words expressing relationship denote only legitimate relatives or failing such relatives reputed legitimate.

(Part XI.—Of the Construction of Wills.)

Illustrations.

(a) A, having three children, B, C and D, of whom B and C are legitimate, and D is illegitimate, leaves his property to be equally divided among "his children." The property belongs to B and C in equal shares, to the exclusion of D.

(b) A, having a niece of illegitimate birth, who has acquired the reputation of being his niece, and having no legitimate niece, bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.

(c) A, having in his will enumerated his children, and named as one of them B, who is illegitimate, leaves a legacy to "his said children." B will take a share in the legacy along with the legitimate children.

(d) A leaves a legacy to "the children of B." B is dead and has left none but illegitimate children. All those who had at the date of the will acquired the reputation of being the children of B are objects of the gift.

(e) A bequeathed a legacy to "the children of B." B never had any legitimate child. C and D had, at the date of the will, acquired the reputation of being children of B. After the date of the will and before the death of the testator, E and F were born, and acquired the reputation of being children of B. Only C and D are objects of the bequest.

(f) A makes a bequest in favour of his child by a certain woman, not his wife. B had acquired, at the date of the will, the reputation of being the child of A by the woman designated. B takes the legacy.

(g) A makes a bequest in favour of his child to be born of a woman, who never becomes his wife. The bequest is void.

(h) A makes a bequest in favour of the child of which a certain woman, not married to him, is pregnant. The bequest is valid.

Rules of construction where will purports to make two bequests to same person.

88. Where a will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first; if there is nothing in the will to show what he intended, the following rules shall prevail in determining the construction to be put upon the will :—

First.—If the same specific thing is bequeathed twice to the same legatee in the same will, or in the will

(Part XI.—Of the Construction of Wills.)

will and again in the codicil, he is entitled to receive that specific thing only.

Second.—Where one and the same will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such, legacy only.

Third.—Where two legacies, of unequal amount, are given to same person in the same will, or in the same codicil, the legatee is entitled to both.

Fourth.—Where two legacies, whether equal or unequal in amount, are given to the same legatee one by a will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

Explanation.—In the four last rules, the word "will" does not include a codicil.

Illustrations.

(a) A, having ten shares, and no more, in the Bank of Bengal, made his will, which contains near its commencement the words "I bequeath my ten shares in the Bank of Bengal to B." After other bequests, the will concludes with the words "and I bequeath my ten shares in the Bank of Bengal to B." B is entitled simply to receive A's ten shares in the Bank of Bengal.

(b) A, by his will, bequeaths to B a diamond ring which was given him by B. A hereby, after giving other legacies, he bequeaths to C the diamond ring which was given him by B. C can claim nothing except the diamond ring which was given to A by B.

(c) A, by his will, bequeaths to B the sum of 5,000 rupees and afterwards, in the same will, repeats the bequest in the same words. B is entitled to one legacy of 5,000 rupees only.

(d) A, by his will, bequeaths to B the sum of 5,000 rupees and afterwards, in the same will, bequeaths to B the sum of 6,000 rupees. B is entitled to receive 11,000 rupees.

(e) A, by his will, bequeaths to B 5,000 rupees and by a codicil to the will he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(Part XI.—Of the Construction of Wills.)

Illustrations.

(a) A, having three children, B, C and D, of whom B and C are legitimate, and D is illegitimate, leaves his property to be equally divided among "his children." The property belongs to B and C in equal shares, to the exclusion of D.

(b) A, having a niece of illegitimate birth, who has acquired the reputation of being his niece, and having no legitimate niece, bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.

(c) A, having in his will enumerated his children, and named as one of them B, who is illegitimate, leaves a legacy to "his said children." B will take a share in the legacy along with the legitimate children.

(d) A leaves a legacy to "the children of B." B is dead and has left none but illegitimate children. All those who had at the date of the will acquired the reputation of being the children of B are objects of the gift.

(e) A bequeathed a legacy to "the children of B." B never had any legitimate child. C and D had, at the date of the will, acquired the reputation of being children of B. After the date of the will and before the death of the testator, E and F were born, and acquired the reputation of being children of B. Only C and D are objects of the bequest.

(f) A makes a bequest in favour of his child by a certain woman, not his wife. B had acquired, at the date of the will, the reputation of being the child of A by the woman designated. B takes the legacy.

(g) A makes a bequest in favour of his child to be born of a woman, who never becomes his wife. The bequest is void.

(h) A makes a bequest in favour of the child of which a certain woman, not married to him, is pregnant. The bequest is valid.

Rules of construction where will purports to make two bequests to same person.

88. Where a will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first; if there is nothing in the will to show what he intended, the following rules shall prevail in determining the construction to be put upon the will :—

First.—If the same specific thing is bequeathed twice to the same legatee in the same will, or in the will

(Part XI.—Of the Construction of Wills.)

will and again in the codicil, he is entitled to receive that specific thing only.

Second.—Where one and the same will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such, legacy only.

Third.—Where two legacies, of unequal amount, are given to same person in the same will, or in the same codicil, the legatee is entitled to both.

Fourth.—Where two legacies, whether equal or unequal in amount, are given to the same legatee one by a will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

Explanation.—In the four last rules, the word “will” does not include a codicil.

Illustrations.

(a) A, having ten shares, and no more, in the Bank of Bengal, made his will, which contains near its commencement the words “I bequeath my ten shares in the Bank of Bengal to B.” After other bequests, the will concludes with the words “and I bequeath my ten shares in the Bank of Bengal to B.” B is entitled simply to receive A’s ten shares in the Bank of Bengal.

(b) A, having one diamond ring, which was given him by B, bequeathed to C the diamond ring which was given by B. A afterwards made a codicil to his will, and thereby, after giving other legacies, he bequeathed to C the diamond ring which was given him by B. C can claim nothing except the diamond ring which was given to A by B.

(c) A, by his will, bequeaths to B the sum of 5,000 rupees and afterwards, in the same will, repeats the bequest in the same words. B is entitled to one legacy of 5,000 rupees only.

(d) A, by his will, bequeaths to B the sum of 5,000 rupees and afterwards, in the same will, bequeaths to B the sum of 6,000 rupees. B is entitled to receive 11,000 rupees.

(e) A, by his will, bequeaths to B 5,000 rupees and by a codicil to the will he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

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(f) A, by one codicil to his will, bequeaths to B 5,000 rupees and by another codicil bequeaths to him 6,000 rupees. B is entitled to receive 11,000 rupees.

(g) A, by his will, bequeaths "500 rupees to B because she was his nurse," and in another part of the will bequeaths 500 rupees to B "because she went to England with his children." B is entitled to receive 1,000 rupees.

(h) A, by his will, bequeaths to B the sum of 5,000 rupees, and also, in another part of the will, an annuity of 400 rupees. B is entitled to both legacies.

(i) A, by his will, bequeaths to B the sum of 5,000 rupees and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 rupees, and takes a contingent interest in another sum of 5,000 rupees.

Constitution
of residuary
legatee.

89. A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his property.

Illustrations.

(a) A makes her will, consisting of several testamentary papers, in one of which are contained the following words:—"I think there will be something left, after all funeral expenses, etc., to give to B, now at school, towards equipping him to any profession he may hereafter be appointed to." B is constituted residuary legatee.

(b) A makes his will, with the following passage at the end of it:—"I believe there will be found sufficient in my banker's hands to defray and discharge my debts, which I hereby desire B to do, and keep the residue for her own use and pleasure." B is constituted the residuary legatee.

(c) A bequeaths all his property to B, except certain stocks and funds, which he bequeaths to C. B is the residuary legatee.

Property to
which resi-
duary legatee
entitled.

90. Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.

Illustration.

A by his will bequeaths certain legacies, one which is void under the 103th section, and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the

(Part XI.—Of the Construction of Wills.)

the date of his will, A purchases a zamindari, which belongs to him at the time of his death. B is entitled to the two legacies and the zamindari as part of the residue.

91. If a legacy be given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and, if he dies without having received it, it shall pass to his representatives.

Time of vesting legacy in general terms.

92. If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appear by the will that the testator intended that it should go to some other person.

In what case legacy lapses.

In order to entitle the representatives of the legatee to receive the legacy it must be proved that he survived the testator.

Illustrations.

(a) The testator bequeaths to B "500 rupees which B owes him." B dies before the testator: the legacy lapses.

(b) A bequest is made to A and his children. A dies before the testator, or happens to be dead when the will is made. The legacy to A and his children lapses.

(c) A legacy is given to A, and, in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

(d) A sum of money is bequeathed to A for life, and after his death to B. A dies in the lifetime of the testator; B survives the testator. The bequest to B takes effect.

(e) A sum of money is bequeathed to A on his completing his eighteenth year, and, in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year, and dies in the lifetime of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(f) The testator and the legatee perished in the same shipwreck. There is no evidence to show which died first. The legacy will lapse.

93. If a legacy be given to two persons jointly, and one of them die before the testator, the other legatee takes the whole.

Legacy does not lapse if one of two joint legatees die before testator.

Illustration.

¹ See Act No. 21 of 1870, s. 6, Genl. Acts, Vol. II.

(Part XI.—Of the Construction of Wills.)

Illustration.

The legacy is simply to A and B A dies before the testator. B takes the legacy.

Effect of words showing testator's intention to give distinct shares.

94. But where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

Illustration.

A sum of money is bequeathed to A, B and C, to be equally divided among them. A dies before the testator. B and C shall only take so much as they would have had if A had survived the testator.

When lapsed share goes as undisposed of.

95. Where the share that lapses is a part of the general residue bequeathed by the will, that share shall go as undisposed of.

Illustration.

The testator bequeaths the residue of his estate to A, B and C, to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

When bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.

96. Where a bequest shall have been made to any child or other lineal descendant of the testator, and the legatee shall die in the lifetime of the testator, but any lineal descendant of his shall survive the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Illustration.

A makes his will, by which he bequeaths a sum of money to his son B for his own absolute use and benefit. B dies before A, leaving a son C who survives A, and having made his will whereby he bequeaths all his property to his widow D. The money goes to D.

Bequest to A for benefit of B does

97. Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the

¹ See Act 21 of 1970, s. 6.

(Part II.—Of the Construction of Wills.)

the death, in the testator's lifetime, of the persons to whom the bequest is made. not larger by A's death.

98. Where a bequest is made simply to a described class of persons the thing bequeathed shall go only to such as shall be alive at the testator's death. Survivorship in case of bequest to described class.

Exception.—If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator by reason of a prior bequest or otherwise, the property shall at that time go to such of them as shall be then alive, and to the representatives of any of them who have died since the death of the testator.

Illustrations

(a) A bequeaths 1,000 rupees to "the children of B" without saying when it is to be distributed among them. B had died previous to the date of the will, leaving three children, C, D and E. E died after the date of the will, but before the death of A. C and D survive A. The legacy shall belong to C and D, to the exclusion of the representatives of E.

(b) A bequeaths a legacy to the children of B. At the time of the testator's death, B has no children. The bequest is void.

(c) A lease for years of a house was bequeathed to A for his life, and after his decease to the children of B. At the death of the testator, B had two children living, C and D, and he never had any other child. Afterwards, during the lifetime of A, C died, leaving E his executor. D has survived A. D and E are jointly entitled to so much of the leasehold term as remains unexpired.

(d) A sum of money was bequeathed to A for her life, and after her decease to the children of B. At the death of the testator, A had died, leaving C and D, and, after that time, E. C and D, and, after that time, E, died before B. C and E died before A. At A's death, E having made no will. A has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E and one to F.

(e) A bequeaths one-third of his lands to B for his life, and after his decease to the sisters of B. At the death of the testator

¹ See Act 21 of 1870, s. 6, Genl. Acts, Vol. II.

(Part XII.—Of void Bequests.)

testator, B had two sisters living, C and D, and after that event another sister E was born. C died during the life of B; D and E have survived B. One-third of A's lands belongs to D, E and the representatives of C, in equal shares.

(f) A bequeaths 1,000 rupees to B for life and after his death equally among the 'children of C. Up to the death of B, C had not had any child. The bequest after the death of B is void.

(g) A bequeaths 1,000 rupees to "all the 'children born or to be born" of B, to be divided among them at the death of C. At the death of the testator, B has two children living, D and E. After the death of the testator, but in the lifetime of C, two other children, F and G, are born to B. After the death of C, another child is born to B. The legacy belongs to D, E, F and G, to the exclusion of the after-born child of B.

(h) A bequeaths a fund to the 'children of B, to be divided among them when the eldest shall attain majority. At the testator's death, B had one child living, named C. He afterwards had two other children, named D and E. E died, but C and D were living when C attained majority. The fund belongs to C, D and the representatives of E, to the exclusion of any child who may be born to B after C's attaining majority.

PART XII.²

OF VOID BEQUESTS.

99. Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

Exception.—If property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest, or otherwise ;
and

¹ See Act 21 of 1870, s. 6, Genl. Acts, Vol. II.

² Of Pt XII, ss. 99 to 103 (both inclusive), apply to the wills of Hindus, Jains, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay—see the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II. As to the application of ss. 99 to 103 in the case of such wills, with reference to adoption—see *ibid.*, s. 6, as amended by the Probate and Administration Act, 1891 (5 of 1891), s. 154. See General Act, Vol. III.

(Part XII.—Of void Bequests.)

and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or, if he be dead, to his representatives.

Illustrations.

(a) A bequeaths 1,000 rupees to the eldest son of B. At the death of the testator, B has no son. The bequest is void.

(b) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death the legacy goes to C's son.

(c) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son; afterwards, during the life of B, a son, named D, is born to C. D dies, then B dies. The legacy goes to the representative of D.

(d) A bequeaths his estate of Greenacre to B for life, and at his decease to the eldest son of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(e) A bequeaths 1,000 rupees to the eldest son of C, to be paid to him after the death of B. At the death of the testator, C has no son, but a son is afterwards born to him during the life of B and is alive at B's death. C's son is entitled to the 1,000 rupees.

100. Where a bequest is made to a person not in existence at the time of the testator's death, subject to a prior bequest contained in the will, the later bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Bequest to person not in existence at testator's death, subject to prior bequest..

Illustrations.

(a) Property is bequeathed to A for his life, and after his death to his eldest son for life, and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(b) A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters

¹ See the Hindu Wills Act, 1870, (21 of 1870), s. 6, Genl. Acts, Vol. II.

(Part XII.—Of void Bequests.)

daughters, some of whom were not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.

(c) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that, if any of them marries under the age of eighteen, her portion shall be settled so that it may belong to herself for life and may be divisible among her children after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect in the case of each daughter who marries under eighteen, of substituting for the absolute bequest to her a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

(d) A bequeaths a sum of money to B for life, and directs that upon the death of B the fund shall be settled upon his daughters, may belong to herself for children after her death. B of the testator's death. In daughters of B is contained in the direction to settle the fund, and this direction amounts to a bequest to persons not yet born, of a life-interest in the fund, that is to say, of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

Rule against
perpetuity.

101. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some persons who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.

Illustrations.

(a) A fund is bequeathed to A for his life, and after his death to B for his life; and after B's death to such of the sons of B as shall first attain the age of 25. A and B survive the testator. Here the son of B who shall first attain the age of 25 may be a son born after the death of the testator; such son may not attain 25 until more than 15 years have elapsed from the death of the longer liver of A and B; and the vesting of the fund may thus be delayed beyond the lifetime

(Part XII.—Of void Bequests.)

lifetime of A and B and the minority of the sons of B. The bequest after B's death is void.

(b) A fund is bequeathed to A for his life, and after his death to B for his life, and after B's death to such of B's sons as shall first attain the age of 25. B dies in the lifetime of the testator, leaving one or more sons. In this case the sons of B are persons living at the time of the testator's decease, and the time when either of them will attain 25 necessarily falls within his own lifetime. The bequest is valid.

(c) A fund is bequeathed to A for his life, and after his death to B for his life, with a direction that after B's death it shall be divided amongst such of B's children as shall attain the age of 18, but that if no child of B shall attain that age, the fund shall go to C. Here the time for the division of the fund must arrive at the latest at the expiration of 18 years from the death of B, a person living at the testator's decease. All the bequests are valid.

(d) A fund is bequeathed to trustees for the benefit of the testator's daughters, with a direction that, if any of them marry under age, her share of the fund shall be settled so as to devolve after her death upon such of her children as shall attain the age of 18. Any daughter of the testator to whom the direction applies must be in existence at his decease, and any portion of the fund which may eventually be settled as directed must vest not later than 18 years from the death of the daughters whose share it was. All these provisions are valid.

102. If a bequest is made to a class of persons, with regard to some of whom it is inoperative by reason of the rules contained in the two last preceding sections, or either of them, such bequest shall be wholly void.

Bequest to a class, some of whom may come under rules in sections 100 and 101.

Illustrations.

(a) A fund is bequeathed to A for life, and after his death to all his children who shall attain the age of 25. A survives the testator, and has some children living at the testator's death. The bequest is valid as to those children who attain the limits allowed for a bequest, viz. 25 years after the testator's decease, and is inoperative as to those children who do not attain 25 until more than 18 years have elapsed after the decease of A. The bequest to A's children, therefore, is inoperative as to any child born after the testator's death; and, as it is given to all his children

as

(Part XII.—Of void Bequests.)

as a class, it is not good as to any division of that class, but is wholly void.

(b) A fund is bequeathed to A for his life, and after his death to B, C, D and all other children of A who shall attain the age of 25. B, C, D are children of A living at the testator's decease. In all other respects the case is the same as that supposed in illustration (a). The mention of B, C and D by name does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void.

Bequest to
take effect
on failure of
bequest void
under
section
100, 101 or
102.

103. Where a bequest is void by reasons of any of the rules contained in the three last preceding sections, any bequest contained in the same will, and intended to take effect after or upon failure of such prior bequest, is also void.

Illustrations.

(a) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, for his life, and after the decease of such son to B. A and B survive the testator. The bequest to B is intended to take effect after the bequest to such of the sons of A as shall first attain the age of 25, which bequest is void under section 101. The bequest to B is void.

(b) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, and, if no son of A shall attain that age, to B. A and B survive the testator. The bequest to B is intended to take effect upon failure of the bequest to such of A's sons as shall first attain the age of 25, which bequest is void under section 101. The bequest to B is void.

Effect of
direction for
accumula-
tion.

104. A direction to accumulate the income arising from any property shall be void; and the property shall be disposed of as if no accumulation had been directed.

Exception.—Where the property is immoveable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator's death;

and

(Part XII.—Of void Bequests.)

and at the end of the year such property and income shall be disposed of respectively, as if the period during which the accumulation has been directed to be made had elapsed.

Illustrations.

(a) The will directs that the sum of 10,000 rupees shall be invested in Government securities, and the income accumulated for 20 years, and that the principal, together with the accumulations, shall then be divided between A, B and C. A, B and C are entitled to receive the sum of 10,000 rupees at the end of the year from the testator's death.

(b) The will directs that 10,000 rupees shall be invested, and the income accumulated until A shall marry, and shall then be paid to him. A is entitled to receive 10,000 rupees at the end of a year from the testator's death.

(c) The will directs that the rents of the farm of Sultanpur shall be accumulated for ten years and that the accumulation shall be then paid to the eldest son of A. At the death of the testator, A has an eldest son living named B. B shall receive at the end of one year, from the testator's death, the rents which have accrued during the year, together with any interest which may have been made by investing them.

(d) The will directs that the rents of the farm of Sultanpur shall be accumulated for ten years, and that the accumulation shall then be paid to the eldest son of A. At the death of the testator, A has no son. The bequest is void.

(e) A bequeaths a sum of money to B, to be paid to him when he shall attain the age of 18, and directs the interest to be accumulated till he shall arrive at the age. At A's death the legacy becomes vested in B; and so much of the interest as is not required for his maintenance and education is accumulated, not by reason of the direction contained in the will, but in consequence of B's minority.

105. No man having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons.

Bequest to religious or charitable uses.

Illustrations.

(Part XIII.—Of the Vesting of Legacies.)

Illustrations.

A having a nephew makes a bequest by a will not executed nor deposited as required—

- for the relief of poor people ;
- for the maintenance of sick soldiers ;
- for the erection or support of a hospital ;
- for the education and preferment of orphans ;
- for the support of scholars ;
- for the erection or support of a school ;
- for the building and repairs of a bridge ;
- for the making of roads ;
- for the erection or support of a church ;
- for the repairs of a church ;
- for the benefit of ministers of religion ;
- for the formation or support of a public garden.

All these bequests are void.

PART XIII.¹

OF THE VESTING OF LEGACIES.

Date of vesting of legacy when payment or possession postponed.

106. Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy.

And in such cases the legacy is from the testator's death said to be vested in interest.

Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed

¹ Pt. XIII applies to the wills of Hindus, Jains, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay—see the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

(Part XIII.—Of the Vesting of Legacies.)

postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person.

Illustrations.

(a) A bequeaths to B 100 rupees, to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B, and if he dies before C, his representatives are entitled to the legacy.

(b) A bequeaths to B 100 rupees, to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest in B.

(c) A fund is bequeathed to A for life, and after his death to B. On the testator's death the legacy to B becomes vested in interest in B.

(d) A fund is bequeathed to A until B attains the age of 18, and then to B. The legacy to B is vested in interest from the testator's death.

(e) A bequeaths the whole of his property to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.

(f) A fund is bequeathed to A, B and C in equal share, to be paid to them on their attaining the age of 18, respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vest in interest in A, B and C, subject to be divested in case A, B and C shall all die under 18, and, upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

107. A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens.

Date of vesting when legacy contingent upon specified uncertain event

A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible.

In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

Exception.—

(Part XIII.—Of the Vesting of Legacies.)

Exception.—Where a fund is bequeathed to any person upon his attaining a particular age, and the will also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit, the bequest of the fund is not contingent.

Illustrations.

(a) A legacy is bequeathed to D in case A, B and C shall all die under the age of 18. D has a contingent interest in the legacy until A, B and C all die under 18, or one of them attains that age.

(b) A sum of money is bequeathed to A "in case he shall attain the age of 18," or "when he shall attain the age of 18." A's interest in the legacy is contingent until the condition shall be fulfilled by his attaining that age.

(c) A legacy is bequeathed to A for life, and after his death B shall not be then living, or B and C each take a contingent interest in the estate until the event which is to vest it in one or in the other shall have happened.

(d) An estate is bequeathed as in the case last supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon A's death.

(e) A legacy is bequeathed to A when she shall attain the age of 18, or shall marry under that age with the consent of B, with a proviso that, if she shall not attain 18, or marry under that age with B's consent, the legacy shall go to C. A and C each take a contingent interest in the legacy. A attains the age of 18. A becomes absolutely entitled to the legacy although she may have married under 18 without the consent of B.

(f) An estate is bequeathed to A until he shall marry, and after that event to B. B's interest in the bequest is contingent until the condition shall be fulfilled by A's marrying.

(g) An estate is bequeathed to A until he shall take advantage of the Act for the Relief of Insolvent Debtors, and after that event to B. B's interest in the bequest is contingent until A takes advantage of the Act.

(h) An estate is bequeathed to A if he shall pay 500 rupees to B. A's interest in the bequest is contingent until he has paid 500 rupees to B.

(i) A

(Part XIII.—Of the Vesting of Legacies.—Part
XIV.—Of Onerous Bequests.)

(i) A leaves his Farm of Sultanpur Khurd to B, if B shall convey his own farm of Sultanpur Buzurg to C. B's interest in the bequest is contingent until he has conveyed the latter farm to C.

(j) A fund is bequeathed to A if B shall not marry C within five years after the testator's death. A's interest in the legacy is contingent until the condition shall be fulfilled by the expiration of the five years without B's having married C, or by the occurrence within that period of an event which makes the fulfilment of the condition impossible.

(k) A fund is bequeathed to A if B shall not make any provision for him by will. The legacy is contingent until B's death.

(l) A bequeaths to B 500 rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.

(m) A bequeaths to B 500 rupees when he shall attain the age of 18, and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

108. Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

Illustration.

A fund is bequeathed to such of the children of A as shall attain the age of 18, with a direction that, while any child of A shall be under the age of 18, the income of the share, to which it may be presumed he will be eventually entitled, shall be applied for his maintenance and education. No child of A who is under the age of 18 has a vested interest in the bequest.

Vesting of interest in bequest to such members of a class as shall have attained particular age.

PART XIV.¹

OF ONEROUS BEQUESTS.

109. Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.

Onerous bequests.

Illustration.

¹ Pt. XIV applies to the wills of Hindus, Jains, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay—see the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

(Part XIV.—Of Onerous Bequests.—Part XV.—
Of Contingent Bequests.)

Illustration.

A, having shares in (X), a prosperous joint stock company, and also shares in (Y) a joint stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint stock companies B refuses to accept the shares in (Y). He forfeits the shares in (X).

One of two separate and independent bequests to same person may be accepted, and other refused.

110. Where a will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

Illustration.

A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B the lease and a sum of money. B refuses to accept the lease. He shall not by this refusal forfeit the money.

PART XV.¹

OF CONTINGENT BEQUESTS.

Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence.

111. Where a legacy is given if a specified uncertain event shall happen, and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect, unless such event happens before the period when the fund bequeathed is payable or distributable.

Illustrations.

(a) A legacy is bequeathed to A, and, in case of his death, to B. If A survives the testator, the legacy to B does not take effect.

(b) A legacy is bequeathed to A, and, in case of his death without children, to B. If A survives the testator or dies in his lifetime leaving a child, the legacy to B does not take effect.

(c) A legacy is bequeathed to A when and if he attains the age of 18 and, in case of his death, to B. A attains the age of 18. The legacy to B does not take effect.

(d) A

¹ Pt. XV applies to the wills of Hindus, Jains, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Malwa and Bombay—see the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Act, Vol. II.

(Part XV.—Of Contingent Bequests.)

(d) A legacy is bequeathed to A for life, and, after his death, to B, and, "in case of B's death without children" to C. The words "in case of B's death without children," are to be understood as meaning in case B shall die without children during the lifetime of A.

(e) A legacy is bequeathed to A for life, and, after his death to B, and, "in case of B's death," to C. The words "in case of B's death" are to be considered as meaning "in case B shall die in the lifetime of A."

112. Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as shall be alive at the time of payment or distribution, unless a contrary intention appear by the will.

Bequest to each of certain persons as shall be surviving at some period not specified.

Illustrations.

(a) Property is bequeathed to A and B to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator, and B survives the testator, it goes to B.

(b) Property is bequeathed to A for life, and, after his death, to B and C, or to the survivor of them, or to the survivor of them, or to the survivor of them. C survives A. At A's death the legacy goes to C.

(c) Property is bequeathed to A for life, and after his death to B and C, or the survivor, with a direction that, if B should not survive the testator, his children are to stand in his place. C dies during the life of the testator; B survives the testator, but dies in the lifetime of A. The legacy goes to the representative of B.

(d) Property is bequeathed to A for life, and, after his death, to B and C, with a direction that, in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A. Afterwards C dies in the lifetime of A. The legacy goes to the representative of C.

(Part XIV.—Of Onerous Bequests.—Part XV.—
Of Contingent Bequests.)

Illustration.

A, having shares in (X), a prosperous joint stock company, and also shares in (Y) a joint stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint stock companies B refuses to accept the shares in (Y). He forfeits the shares in (X).

One of two separate and independent bequests to same person may be accepted, and other refused.

110. Where a will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

Illustration.

A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B the lease and a sum of money. B refuses to accept the lease. He shall not by this refusal forfeit the money.

PART XV.¹

OF CONTINGENT BEQUESTS.

Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence.

111. Where a legacy is given if a specified uncertain event shall happen, and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect, unless such event happens before the period when the fund bequeathed is payable or distributable.

Illustrations.

(a) A legacy is bequeathed to A, and, in case of his death, to B. If A survives the testator, the legacy to B does not take effect.

(b) A legacy is bequeathed to A, and, in case of his death without children, to B. If A survives the testator or dies in his lifetime leaving a child, the legacy to B does not take effect.

(c) A legacy is bequeathed to A when and if he attains the age of 18, and, in case of his death, to B. A attains the age of 18. The legacy to B does not take effect.

(d) A

¹ Pt. XV applies to the wills of Hindus, Jains, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay—see the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

(Part XV.—Of Contingent Bequests.)

(d) A legacy is bequeathed to A for life, and, after his death, to B, and, "in case of B's death without children" to C. The words "in case of B's death without children," are to be understood as meaning in case B shall die without children during the lifetime of A.

(e) A legacy is bequeathed to A for life, and, after his death to B, and, "in case of B's death," to C. The words "in case of B's death" are to be considered as meaning "in case B shall die in the lifetime of A."

112. Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as shall be alive at the time of payment or distribution, unless a contrary intention appear by the will.

Bequest to such of certain persons as shall be surviving at some period not specified.

Illustrations.

(a) Property is bequeathed to A and B to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator, and B survives the testator, it goes to B.

(b) Property is bequeathed to A for life, and, after his death, to B and C, to be equally divided between them, or to the survivor of them. B dies during the life of A; C survives A. At A's death the legacy goes to C.

(c) Property is bequeathed to A for life, and after his death to B and C, or the survivor, with a direction that, if B should not survive the testator, his children are to stand in his place. C dies during the life of the testator; B survives the testator, but dies in the lifetime of A. The legacy goes to the representative of B.

(d) Property is bequeathed to A for life, and, after his death, to B and C, with a direction that, in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A. Afterwards C dies in the lifetime of A. The legacy goes to the representative of C.

(Part XVI.—Of Conditional Bequests.)

PART XVI.¹

OF CONDITIONAL BEQUESTS.

Bequest upon impossible condition.

113. A bequest upon an impossible condition is void.

Illustrations.

(a) An estate is bequeathed to A on condition that he shall walk 100 miles in an hour. The bequest is void.

(b) A bequeaths 500 rupees to B on condition that he shall marry A's daughter. A's daughter was dead at the date of the will. The bequest is void.

Bequest upon illegal or immoral condition.

114. A bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void.

Illustrations.

(a) A bequeaths 500 rupees to B on condition that he shall murder C. The bequest is void.

(b) A bequeaths 5,000 rupees to his niece if she will desert her husband. The bequest is void.

Fulfilment of condition precedent to vesting of legacy.

115. Where a will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

Illustrations.

(a) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, D and E. A marries with the written consent of B. C is present at the marriage. D sends a present to A previous to the marriage. E has been personally informed by A of his intentions, and has made no objection. A has fulfilled the condition.

(b) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. D dies. A marries with the consent of B and C. A has fulfilled the condition.

(c) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries in the life-time

¹ Pt. XVI applies to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay—see the Hindu Wills Act 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

(Part XVI.—Of Conditional Bequests.)

time of B, C and D, with the consent of B and C only, A has not fulfilled the condition.

(d) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A obtains the unconditional assent of B, C and D to his marriage with E. Afterwards B, C and D capriciously retract their consent. A marries E. A has fulfilled the condition.

(e) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries without the consent of B, C and D, but obtains their consent after the marriage. A has not fulfilled the condition.

(f) A makes his will, whereby he bequeaths a sum of money to B if B shall marry with the consent of A's executors. B marries during the lifetime of A, and A afterwards expresses his approbation of the marriage. A dies. The bequest to B takes effect.

(g) A legacy is bequeathed to A if he executes a certain document within a time specified in the will. The document is executed by A within a reasonable time, but not within the time specified in the will. A has not performed the condition, and is not entitled to receive the legacy.

116. Where there is a bequest to one person and a bequest of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator.

Bequest to A and, on failure of prior bequest, to B.

Illustrations.

(a) A bequeaths a sum of money to his own children surviving him, and, if they all die under 18, to B. A dies without having ever had a child. The bequest to B takes effect.

(b) A bequeaths
" " " " " "
" " " " " "
" " " " " "

117. Where the will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect, unless the prior bequest fails in that particular manner.

When second bequest not to take effect on failure of first.

Illustration.

(Part XVI.—Of Conditional Bequests.)

Illustration.

A makes a bequest to his wife, but, in case she should die in his lifetime, bequeaths to B that which he had bequeathed to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The bequest to B does not take effect.

Bequest over conditional upon happening or not happening of specified uncertain event.

118. A bequest may be made to any persons with the condition superadded that in case a specified uncertain event shall happen the thing bequeathed shall go to another person, or that in case a specified uncertain event shall not happen the thing bequeathed shall go over to another person.

In each case the ulterior bequest is subject to the rules contained in sections 107, 108, 109, 110, 111, 112, 113, 114, 116 and 117.

Illustrations.

(a) A sum of money is bequeathed to A, to be paid to him at the age of 18, and, if he shall die before he attains that age, to B. A takes a vested interest in the legacy, subject to be divested and to go to B in case A shall die under 18.

(b) An estate is bequeathed to A with a proviso that if A shall dispute the competency of the testator to make a will, the estate shall go to B. A disputes the competency of the testator to make a will. The estate goes to B.

(c) A sum of money is bequeathed to A for life, and, after his death, to B; but if E shall then be dead, leaving a son, such son is to stand in the place of B. B takes a vested interest in the legacy, subject to be divested if he dies leaving a son in A's lifetime.

(d) A sum of money is bequeathed to A and B, and if either should die during the life of C, then to the survivor living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one-half of the money, and the representative of B takes the other half.

(e) A bequeaths to B the interest of a fund for life, and directs the fund to be divided at her death, equally among her three children, or such of them as shall be living at her death. All the children of B die in B's lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

(Part XVI.—Of Conditional Bequests.)

110. An ulterior bequest of the kind contemplated by the last preceding section cannot take effect, unless the condition is strictly fulfilled. Condition must be strictly fulfilled.

Illustrations.

(a) A legacy is bequeathed to A, with a proviso that, if he marries with the consent of B, C and D, the legacy shall go to E. D dies. Even if A marries without the consent of B and C, the gift to E does not take effect.

(b) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower and marries again without the consent of B. The bequest to C does not take effect.

(c) A legacy is bequeathed to A, to be paid at 18, or marriage, with a proviso that, if A dies under 18 or marries without the consent of B, the legacy shall go to C. A marries under 18, without the consent of B. The bequest to C takes effect.

120. If the ulterior bequest be not valid, the original bequest is not affected by it. Original bequest not affected by invalidity of second.

Illustrations.

(a) An estate is bequeathed to A for his life, with a condition that, if he dies without issue, the estate shall go to B. 100 years after his death.

(b) An estate is bequeathed to A for her life, and, if she do not desert her husband, to B. A is entitled to the estate during her life as if no condition had been inserted in the will.

(c) An estate is bequeathed to A for life, and, if he marries, to the eldest son of B for life. B, at the date of the testator's death, had not had a son. The bequest over is void under section 92, and A is entitled to the estate during his life.

121. A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen. Bequest conditioned that it shall cease to have effect in case specified uncertain event shall happen or not happen.

Illustrations.

(a) An estate is bequeathed to A for his life, with a proviso that, in case he shall cut down a certain wood, the bequest shall cease.

(Part XVI.—Of Conditional Bequests.)

cease to have any effect. A cuts down the wood. He loses his life-interest in the estate.

(b) An estate is bequeathed to A, provided that, if he marries under the age of 25 without the consent of the executors named in the will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

(c) An estate is bequeathed to A, provided that, if he shall not go to England within three years after the testator's death, his interest in the estate shall cease. A does not go to England within the time prescribed. His interest in the estate ceases.

(d) An estate is bequeathed to A, with a proviso that if she becomes a nun, she shall cease to have any interest in the estate. A becomes a nun. She loses her interest under the will.

(e) A fund is bequeathed to A for life, and, after his death, to B, if B shall be then living, with a proviso that, if B shall become a nun, the bequest to her shall cease to have any effect. B becomes a nun in the lifetime of A. She thereby loses her contingent interest in the fund.

Such condition must not be invalid under section 107.

122. In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by the 107th section.

Result of legatee rendering impossible or indefinitely postponing act for which no time specified, and on non-performance of which subject-matter to go over.

123. Where a bequest is made with a condition superadded that, unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect, but no time is specified for the performance of the act; if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Illustration.

(a) A bequest is made to A, with a proviso that, unless he enters the army, the legacy shall go over to B. A takes holy orders, and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(b) A bequest is made to A, with a proviso that it shall cease to have any effect if he does not marry B's daughter. A marries

(Part XVI.—Of Conditional Bequests. Part XVII.—Of Bequests with Directions as to Application or Enjoyment.)

marries a stranger and thereby indefinitely postpones the fulfilment of the conditions. The bequest ceases to have effect.

124. Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud.

Performance of condition, precedent or subsequent, within specified time. Further time in case of fraud.

PART XVII.¹

OF BEQUESTS WITH DIRECTIONS AS TO APPLICATION OR ENJOYMENT.

125. Where a fund is bequeathed absolutely to or for the benefit of any person, but the will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will had contained no such direction.

Direction that fund be employed in particular manner following absolute bequest of same to or for benefit of any person.

Illustration.

(a) A sum of money is bequeathed towards purchasing a country residence for A, or to purchase an annuity for A or to purchase a commission in the army for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

126. Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that

Direction that mode of enjoyment of

¹ Pt. XVII applies to the wills of Hindus, Jains, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay—see the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

(Part XVII.—Of Bequests with Directions as to Application or Enjoyment.)

absolute bequest is to be restricted, to secure specified benefit for legatees.

that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him as if the will had contained no such direction.

Illustrations.

(a) A bequeaths the residue of his property to be divided equally among his daughters, and directs that the shares of the daughters shall be settled upon themselves respectively for life and be paid to their children after their death. All the daughters die unmarried. The representatives of each daughter are entitled to her share of the residue.

(b) A directs his trustees to raise a sum of money for his daughter and he then directs that they shall invest the fund, and pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

Bequest of fund for certain purposes, some of which cannot be fulfilled.

127. Where a testator does not absolutely bequeath a fund, so as to sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the will, remains a part of the estate of the testator.

Illustrations.

(a) A directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and at his death shall divide the principal among his children. The son dies without having ever had a child. The fund, after the son's death, belongs to the estate of the testator.

(b) A bequeaths the residue of his estate, to be divided equally among his daughters with a direction that they are to have the interest only during their lives, and that at their decease the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

PART XVIII.

(Part XVIII.—Of Bequests to an Executor. Part XIX.—Of Specific Legacies.)

PART XVIII.¹

OF BEQUESTS TO AN EXECUTOR.

128. If a legacy is bequeathed to a person who is named an executor of the will, he shall not take the legacy unless he proves the will or otherwise manifests an intention to act as executor.

Legatee named as executor cannot take unless he shows intention to act as executor.

Illustration.

(a) A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the will, and dies a few days after the testator, without having proved the will. A has manifested an intention to act as executor.

PART XIX.¹

OF SPECIFIC LEGACIES.

129. Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property the legacy is said to be specific.

Specific legacy defined.

Illustrations.

(a) A bequeaths to B—

“the diamond ring presented to him by C”:

“his gold chain”:

“a certain bale of wool”:

“a certain piece of cloth”:

“ about
utta, at

“the sum of 1,000 rupees in a certain chest”:

“the debt which B owes him”:

“all his bills, bonds and securities belonging to him lying in his lodgings in Calcutta”:

“all his furniture in his house in Calcutta”:

“all his goods on board a certain ship then lying in the river Hugli”:

“2,000 rupees which he has in the hands of C”:

“the

¹Pts. XVIII and XIX apply to the wills of Hindus, Jains, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay—see the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

(Part XIX.—Of Specific Legacies.)

- "the money due to him on the bond of D";
- "his mortgage on the Rampur factory";
- "one-half of the money owing to him on his mortgage of Rampur factory";
- "1,000 rupees, being part of a debt due to him from C";
- "his capital stock of 1000*l.* in East India Stock";
- "his promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan";
- "all such sums of money as his executors may, after his death, receive in respect of the debt due to him from the insolvent firm of D and Company";
- "all the wine which he may have in his cellar at the time of his death";
- "such of his horses as B may select";
- "all his shares in the Bank of Bengal";
- "all his shares in the Bank of Bengal which he may possess at the time of his death";
- "all the money which he has in the 5½ per cent. loan of the Government of India";
- "all the Government securities he shall be entitled to at the time of his decease."

Each of these legacies is specific.

(b) A, having Government promissory notes for 10,000 rupees, bequeaths to his executors "Government promissory notes for 10,000 rupees in trust to sell" for the benefit of B. The legacy is specific.

(c) A having property at Benares, and also in other places, bequeaths to B all his property at Benares. The legacy is specific.

(a) A bequeaths to B—

- his house in Calcutta :
- his zamindari of Rampur :
- his taluq of Ramnagar :
- his lease of the indigo-factory of Salkya :
- an annuity of 500 rupees out of the rents of his zamindari of W.

A directs his zamindari of X to be sold, and the proceeds to be invested for the benefit of B.

Each of these bequests is specific.

(e) A by his will charges his zamindari of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamindari to D. Each of these bequests is specific.

(f) A

(Part XIX.—Of Specific Legacies.)

(f) A bequeaths a sum of money—

to buy a house in Calcutta for B :

to buy an estate in zila Faridpur for B :

to buy a diamond ring for B :

to buy a horse for B :

to be invested in shares in the Bank of Bengal for B :

to be invested in Government securities for B

A bequeaths to B—

"a diamond ring" :

"a horse" :

"10,000 rupees worth of Government securities" :

"an annuity of 500 rupees" :

"2,000 rupees, to be paid in cash" :

"so much money as will produce 5,000 rupees 4 per cent. Government securities." :

These bequests are not specific.

(g) A having property in England and property in India, bequeaths a legacy to B, and directs that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of property which he may leave in England. No one of these legacies is specific.

130. Where a certain sum is bequeathed, the legacy is not specific merely because the stock, funds or securities in which it is invested are described in the will.

Bequest of certain sum where stocks, etc., in which invested are described.

Illustration.

A bequeaths to B—

"10,000 rupees of his funded property" :

"10,000 rupees of his property now invested in shares of the East Indian Railway Company" :

"10,000 rupees, at present secured by mortgage of Rampur factory."

No one of these legacies is specific.

131. Where a bequest is made in general terms, of a certain amount of any kind of stock, the legacy is not specific merely because the testator was, at the date of his will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

Bequest of stock where testator had, at date of will, equal or greater amount of stock of same kind.

Illustration.

(Part XIX.—Of Specific Legacies.)

Illustration.

A bequeaths to B 5,000 rupees five per cent. Government securities. A had at the date of the will five per cent. Government securities for 5,000 rupees. The legacy is not specific.

Bequest of money where not payable until part of testator's property disposed of in certain way.

132. A money legacy is not specific merely because the will directs its payment to be postponed until some part of the property of the testator shall have been reduced to a certain form, or remitted to a certain place.

Illustration.

A bequeaths to B 10,000 rupees and directs that this legacy shall be paid as soon as A's property in India shall be realized in England. The legacy is not specific.

When enumerated articles not deemed specifically bequeathed.

133. Where a will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed.

Retention, in form, of specific bequest to several persons in succession.

134. Where property is specifically bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing.

(a) A, having a lease of a house for a term of years, fifteen of which were unexpired at the time of his death, has bequeathed the lease to B for his life, and after B's death to C. B is to enjoy the property as A left it, although, if B lives for fifteen years, C can take nothing under the bequest.

(b) A, having an annuity during the life of B, bequeaths it to C for his life, and after C's death to D. C is to enjoy the annuity as A left it, although, if B dies before D, D can take nothing under the bequest.

Sale and investment of proceeds of property bequeathed to two or more persons in succession.

135. Where property comprised in a bequest to two or more persons in succession is not specifically bequeathed, it shall, in the absence of any direction to the contrary, be sold, and the proceeds of the sale shall be invested in such securities as the High Court may, by any general rule to be made from time to time,

(Part XIX.—Of Specific Legacies. Part XX.—
Of Demonstrative Legacies.)

time, authorize or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the will.

Illustration.

A having a lease for a term of years, bequeaths "all his property to B for life, and after B's death to C. The lease must be sold, the proceeds invested as stated in text and the annual income arising from the fund is to be paid to B for life. At B's death the capital of the fund is to be paid to C.

136. If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

PART XX.¹

OF DEMONSTRATIVE LEGACIES.

137. Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Demonstrative legacy defined.

Explanation.—The distinction between a specific legacy and a demonstrative legacy consists in this, that

where specified property is given to the legatee, the legacy is specific;

where the legacy is directed to be paid out of specified property, it is demonstrative.

Illustrations.

(a) A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The legacy to B is specific; the legacy to C is demonstrative.

(b) A

¹ Pt. XX applies to the wills of Hindus, Jains, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay—see the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol II.

(Part XX.—Of Demonstrative Legacies. Part XXI.—Of Ademption of Legacies.)

(b) A bequeaths to B—

“ten bushels of the corn which shall grow in his field of Greenacre”;

“80 chests of the indigo which shall be made at his factory of Rampur”;

“1,000 rupees out of his five per cent. promissory notes of the Government of India”;

an annuity of 500 rupees “from his funded property”;

“1,000 rupees out of the sum of 2,000 rupees due to him by C”;

an annuity, and directs it to be paid “out of the rents arising from his taluk of Ramnagar.”

(c) A bequeaths to B—

“10,000 rupees out of his estate at Ramnagar,” or charges it on his estate at Ramnagar:

“10,000 rupees, being his share of the capital embarked in a certain business.”

Each of these bequests is demonstrative.

Order of payment when legacy directed to be paid out of fund the subject of specific legacy.

138. Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund, and, so far as the residue shall be deficient, out of the general assets of the testator.

Illustration.

A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The debt due to A from W is only 1,500 rupees; of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

PART XXI.¹

OF ADEPTION OF LEGACIES.

Ademption explained.

139. If anything which has been specifically bequeathed does not belong to the testator at the time

¹ Pt. XXI applies to the wills of Hindus, Jains, Sikhs and Budhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay—see the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

(Part XXI.—Ademption of Legacies.)

time of his death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect, by reason of the subject-matter having been withdrawn from the operation of the will.

Illustrations.

(a) A bequeaths to B—

“the diamond ring presented to him by C”;

“his gold chain”;

“a certain bale of wool”;

“a certain piece of cloth”;

“all his household goods which shall be in or about his dwelling-house in M. Street in Calcutta, at the time of his death.”

A in his lifetime,—

sells or gives away the ring :

converts the chain into a cup :

converts the wool into cloth :

makes the cloth into a garment :

takes another house into which he removes all his goods.

Each of these legacies is adeemed.

(b) A bequeaths to B—

“the sum of 1,000 rupees in a certain chest”;

“all the horses in his stable.”

At the death of A, no money is found in the chest, and no horses in the stable. The legacies are adeemed.

(c) A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned. The legacy is adeemed.

140. A demonstrative legacy is not adeemed by reason that the property on which it is charged by the will does not exist at the time of the death of the testator, or has been converted into property of a different kind; but it shall in such case be paid out of the general assets of the testator.

Non-adeemption of demonstrative legacy.

141. Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.

Adeemption of specific bequest of right to receive something from third party.

Illustrations.

(Part XXI.—Of Ademption of Legacies.)

Illustrations.

(a) A bequeaths to B—

“the debt which C owes him” :

“2,000 rupees which he has in the hands of D” :

“the money due to him on the bond of E” :

“his mortgage on the Rampur factory.”

All these debts are extinguished in A's lifetime, some with and some without his consent. All the legacies are adeemed.

(b) A bequeaths to B “his interest in certain policies of life assurance.” A in his lifetime receives the amount of the policies. The legacy is adeemed.

Ademption
pro tanto
by testator's
receipt of
part of
entire thing
specifically
bequeathed.

142. The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum so received.

Illustration.

A bequeaths to B “the debt due to him by C.” The debt amounts to 10,000 rupees. C pays to A 5,000 rupees, the one-half of the debt. The legacy is revoked by ademption, so far as regards the 5,000 rupees received by A.

Ademption
pro tanto
by testator's
receipt of
portion of
entire fund
of which
portion has
been speci-
fically
bequeathed.

143. If a portion of an entire fund or stock be specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received ; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Illustration.

A bequeaths to B one-half of the sum of 10,000 rupees due to him from W. A in his lifetime receives 6,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W to A at the time of his death belong to B under the specific bequest.

Order of
payment
where por-
tion of fund
specifically
bequeathed
to one
legatee, and

144. Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee ; if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific

(Part XXI.—Of Ademption of Legacies.)

specific legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

legacy charged on same fund to another, and, testator having received portion of that fund, remainder insufficient to pay both legacies.

Illustration.

A bequeaths to B 1,000 rupees, part of the debt of 2,000 rupees, due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. A afterwards receives 5,000 rupees, part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

145. Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.

Ademption where stock, specifically bequeathed, does not exist at testator's death.

Illustration.

A bequeaths to B—

“his capital stock of 1,000*l.* in East India Stock”:

“his promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan.”

A sells the stock and the notes. The legacies are adeemed.

146. Where stock which has been specifically bequeathed does only in part exist at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death.

Illustration.

A bequeaths to B “his 10,000 rupees in the 5½ per cent loan of the Government of India.” A sells one-half of his 10,000 rupees in the loan in question. One-half of the legacy is adeemed.

147. A specific bequest of goods under a description connecting them with a certain place is not adeemed by reason that they have been removed from such place from any temporary cause,

Non-ademption of specific bequest of goods described as

OR

(Part XXI.—Of Ademption of Legacies.)

connected
with certain
place, by
reason of
removal,

or by fraud, or without the knowledge or sanction of the testator.

Illustration.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." The goods are removed from the house to save them from fire. A dies before they are brought back.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

When removal of thing bequeathed does not constitute ademption.

148. The removal of the thing bequeathed from the place in which it is stated in the will to be situated does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.

Illustrations.

A bequeaths to B "all the bills, bonds and other securities for money belonging to him then lying in his lodgings in Calcutta." At the time of his death, these effects had been removed from his lodgings in Calcutta.

A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only which he removes with himself to each house. At the time of his death the furniture is in the house at Chinsurah.

A bequeaths to B all his goods on board a certain ship then lying in the river Hughli. The goods are removed by A's directions to a warehouse, in which they remain at time of the A's death.

No one of these legacies is revoked by ademption.

When thing bequeathed is a valuable to be received by testator from

149. Where the thing bequeathed is not the right to receive something of value from a third person but the money or other commodity which shall be received from the third person by the testator, himself or by his representatives, the receipt of such

sum

(Part XXI.—Of Ademption of Legacies.)

sum of money or other commodity by the testator shall not constitute an ademption ;

third person and testator himself, or his representative, receives it.

but if he mixes it up with the general mass of his property, the legacy is adeemed.

Illustration.

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C, and sets it apart from the general mass of his property. The legacy is not adeemed.

150. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

Change by operation of law of subject of specific bequest between date of will and testator's death.

Illustrations.

A bequeaths to B "all the money which he has in the 5½ per cent loan of the Government of India." The securities for the 5½ per cent. loan are converted during A's lifetime into 5 per cent. stock.

A bequeaths to B the sum of 2,000*l.* invested in Consols in the names of trustees for A. The sum of 2,000*l.* is transferred by the trustees into A's own name.

A bequeaths to B the sum of 10,000 rupees in promissory notes of the Government of India which he has power under his marriage settlement, to dispose of by will. Afterwards, in A's lifetime, the fund is converted into Consols by virtue of an authority contained in the settlement.

No one of these legacies has been adeemed.

151. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Change of subject without testator's knowledge.

Illustration.

A bequeaths to B "all his 3 per cent. Consols." The Consols are, without A's knowledge, sold by his agent, and the proceeds

(Part XXI.—Of Ademption of Legacies.)

connected
with certain
place, by
reason of
removal.

or by fraud, or without the knowledge or sanction of the testator.

Illustration.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." The goods are removed from the house to save them from fire. A dies before they are brought back.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

When removal of thing bequeathed does not constitute ademption.

148. The removal of the thing bequeathed from the place in which it is stated in the will to be situated does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.

Illustrations.

his lodgings in Calcutta.

A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only which he removes with himself to each house. At the time of his death the furniture is in the house at Chinsurah.

A bequeaths to B all his goods on board a certain ship then lying in the river Hughli. The goods are removed by A's directions to a warehouse, in which they remain at time of the A's death.

No one of these legacies is revoked by ademption.

When thing bequeathed is a valuable to be received by testator from

149. Where the thing bequeathed is not the right to receive something of value from a third person but the money or other commodity which shall be received from the third person by the testator, himself or by his representatives, the receipt of such sum

(Part XXI.—Of Ademption of Legacies.)

sum of money or other commodity by the testator shall not constitute an ademption ;

but if he mixes it up with the general mass of his property, the legacy is adeemed.

third person;
and
testator
himself, or
his represen-
tative, re-
ceives it.

Illustration.

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C, and sets it apart from the general mass of his property. The legacy is not adeemed.

150. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

Change by
operation of
law of
subject of
specific
bequest
between date
of will and
testator's
death.

Illustrations.

A bequeaths to B "all the money which he has in the 5½ per cent. loan of the Government of India." The securities for the 5½ per cent. loan are converted during A's lifetime into 5 per cent. stock.

A bequeaths to B the sum of 2,000*l.* invested in Consols in the names of trustees for A. The sum of 2,000*l.* is transferred by the trustees into A's own name.

A bequeaths to B the sum of 10,000 rupees in promissory notes of the Government of India which he has power under his marriage settlement, to dispose of by will. Afterwards, in A's lifetime, the fund is converted into Consols by virtue of an authority contained in the settlement.

No one of these legacies has been adeemed.

151. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Change of
subject
without
testator's
knowledge.

Illustration.

A bequeaths to B "all his 3 per cent. Consols." The Consols are, without A's knowledge, sold by his agent, and the proceeds

(Part XXI.—Of *Ademption of Legacies.* Part XXII.—Of the *Payment of Liabilities in respect of the Subject of a Bequest.*)

proceeds converted into East India Stock. This legacy is not adeemed.

Stock specifically bequeathed, lent to third party on condition that it be replaced. Stock specifically bequeathed sold but replaced, and belonging to testator at his death.

152. Where stock which has been specifically bequeathed is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed.

153. Where stock specifically bequeathed, is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed.

PART XXII.¹

OF THE PAYMENT OF LIABILITIES IN RESPECT OF THE SUBJECT OF A BEQUEST.

Non-liability of executor to exonerate specific legatees.

154. Where property specifically bequeathed is, subject at the death of the testator to any pledge, lien or incumbrance, created by the testator himself or by any person under whom he claims, then unless a contrary intention appears by the will, the legatee, if he accepts the bequest, shall accept it subject to such pledge or incumbrance, and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance.

A contrary intention shall not be inferred from any direction which the will may contain for the payment of the testator's debts generally.

Explanation.—A periodical payment in the nature of land-revenue or in the nature of rent is not such an incumbrance as is contemplated by this section.

Illustrations.

¹ Pt. XXII applies to the wills of Hindus, Jains, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay—see the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

(Part XXII.—Of the Payment of Liabilities in respect of the Subject of a Bequest.)

Illustrations.

(a) A bequeaths to B the diamond ring given him by C. At A's death the ring is held in pawn by D, to whom it has been pledged by A. It is the duty of A's executors, if the state of the testator's assets will allow them, to allow B to redeem the ring.

(b) A bequeaths to B a zamindari which at A's death is subject to a mortgage for 10,000 rupees; and the whole of the principal sum, together, with interest to the amount of 1,000 rupees, is due at A's death. B if he accepts the bequest, accepts it subject to his charge, and is liable, as between himself and A's estate, to pay the sum of 11,000 rupees thus due.

155. Where anything is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.

Completion of testator's title to things bequeathed to be at cost of his estate.

Illustration.

(a) A, having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths it to B, and dies before he has paid the purchase-money, the purchase-money must be made good out of A's assets.

(b) A, having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A's assets.

156. Where there is a bequest of any interest in immoveable property in respect of which payment in the nature of land-revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them up to the day of his death.

Exoneration of legatee's immoveable property for which land-revenue or rent payable periodically

Illustration.

A bequeaths to B a house, in respect of which 365 rupees are payable annually, by way of rent. A pays his rent at the usual time, and dies 25 days after A's estate shall make good 25 rupees in respect of the rent.

157. In

(Part XXII.—Of the Payment of Liabilities in respect of the subject of a Bequest.)

Exoneration
of specific
legatee's
stock in Joint
Stock Com-
pany.

157. In the absence of any direction in the will, where there is a specific bequest of stock in a Joint Stock Company, if any call or other payment is due from the testator at the time of his death in respect of such stock, such call or payment shall, as between the testator's estate and the legatee, be borne by such estate ;

but, if any call or other payment shall, after the testator's death, become due in respect of such stock, the same shall, as between the testator's estate and the legatee, be borne by the legatee, if he accept the bequest.

Illustrations.

(a) A bequeaths to B his share in a certain railway. At A's death there was due from him the sum of 5*l.* in respect of each share, being the amount of a call which had been duly made, and the sum of 5*s.* in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(b) A has agreed to take 50 shares in an intended Joint Stock Company, and has contracted to pay up 5*l.* in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(c) A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

(d) A bequeaths to B his shares in a Joint Stock Company. B accepts the bequest. Afterwards the affairs of the Company are wound up, and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(e) A is the owner of ten shares in a Railway Company. At a meeting held during his lifetime a call is made of 3*l.* per share, payable by three instalments. A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment. A's estate must pay the first instalment, and B, if he accepts the legacy, must pay the remaining instalments.

(Part XXIII.—Of Bequests of Things described in General Terms.—Part XIV.—Of Bequests of the Interest or Produce of a Fund.)

PART XXIII.¹

OF BEQUESTS OF THINGS DESCRIBED IN GENERAL TERMS.

158. If there be a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

Bequest of things described in general terms.

Illustrations

(a) A bequeaths to B a pair of carriage-horses, or a diamond ring. The executor must provide the legatee with such articles if the state of the assets will allow it.

(b) A bequeaths to B "his pair of carriage-horses." A had no carriage-horses at the time of his death. The legacy fails.

PART XXIV.¹

OF BEQUESTS OF THE INTEREST OR PRODUCE OF A FUND.

159.. Where the interest or produce of a fund is bequeathed to any person, and the will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee.

Bequest of interest or produce of fund.

Illustrations.

(a) A bequeaths to B the interest of his 5 per cent. promissory notes of the Government of India. There is no other clause in the will affecting those securities. B is entitled to A's 5 per cent. promissory notes of the Government of India.

(b) A bequeaths the interest of his 5½ per cent. promissory notes of the Government of India to B for his life, and after his death to C. B is entitled to the interest of the notes during his life, and C is entitled to the notes upon B's death.

(c) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

PART XXV.

¹ Pts. XXIII & XXIV apply to the wills of Hindus, Jains, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay—see the Hindu Wills Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

(Part XXV.—Of Bequests of Annuities.)

PART XXV.¹

OF BEQUESTS OF ANNUITIES.

Annuity created by will payable for life only unless contrary intention appears by will.

160. Where an annuity is created by will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the will. And this rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

Illustrations.

(a) A bequeaths to B 500 rupees a year. B is entitled during his life to receive the annual sum of 500 rupees.

(b) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(c) A bequeaths an annuity of 500 rupees to B for life, and on B's death to C. B is entitled to an annuity of 500 rupees during his life. C if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally, or where money bequeathed to be invested in purchase of annuity.

161. Where the will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of any annuity for any person, on the testator's death the legacy vests in interest in the legatee, and he is entitled at his option to have an annuity purchased for him, or to receive the money appropriated for that purpose by the will.

Illustrations.

(a) A by his will directs that his executors shall, out of his property, purchase an annuity of 1,000 rupees for B. B is entitled at his option to have an annuity of 1,000 rupees for his life purchased for him, or to receive such a sum as will be sufficient for the purchase of such an annuity.

(b) A

¹ Pt. and XXV applies to the wills of Hindus, Jains, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay—see the Hindu Will's Act, 1870 (21 of 1870), s. 2, Genl. Acts, Vol. II.

(Part XXV.—Of Bequests of Annuities. Part
XXVI.—Of Legacies to Creditors and Portioners.)

(b) A bequeaths a fund to B for his life, and directs that after B's death it shall be laid out in the purchase of an annuity for C. B and C survive the testator. C dies in B's lifetime. On B's death the fund belongs to the representative of C.

162. Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the will the annuity shall abate in the same proportion as the other pecuniary legacies given by the will. Abatement of annuity.

163. Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose. Where of annuity and residuary gift, whole annuity to be first satisfied.

PART XXVI.¹

OF LEGACIES CREDITORS AND PORTIONERS.

164. Where a debtor bequeaths a legacy to his creditor, and it does not appear from the will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to the amount of the debt. Creditor *primâ facie* entitled to legacy as well as debt

165. Where a parent, who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion. Child *primâ facie* entitled to legacy as well as portion.

Illustration.

A, by articles entered into in contemplation of his marriage with B, covenanted that he would pay to each of the daughters

¹ The XXVI. A XXVI. only in the will of the testator. Jains, Sikhs and towns of Madras
Acts, vol. ii. 870), s. 2, Genl.

(Part XXVI.—Of Legacies to Creditors and Portioners. Part XXVII.—Of Election.)

daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken. A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

No ademption by subsequent provision for legatee.

166. No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

Illustrations.

(a) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(b) A bequeaths 40,000 rupees to B, his orphan niece whom he had brought up from her infancy. Afterwards, on the occasion of B's marriage, A settles upon her the sum of 80,000 rupees. The legacy is not thereby diminished.

PART XXVII.¹

OF ELECTION.

Circumstances in which election takes place.

167. Where a man, by his will, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and in the latter case he shall give up any benefits which may have been provided for him by the will.

Devolution of interest relinquished by owner.

168. The interest so relinquished shall devolve as if it had not been disposed of by the will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will.

Testator's belief as to his ownership immaterial.

169. This rule will apply whether the testator does or does not believe that which he professes to dispose of by his will to be his own.

Illustrations.

¹ See note on preceding page.

(Part XXVII.—Of Election.)

Illustrations.

(a) The farm of Sultanpur was the property of C. A bequeathed it to B, giving a legacy of 1,000 rupees to C. C has elected to retain his farm of Sultanpur, which is worth 500 rupees. C forfeits his legacy of 1,000 rupees, of which 500 rupees goes to B, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(b) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B. B must elect to give up the jewel, or to lose the estate.

(c) A bequeaths to B 1,000 rupees, and to C an estate which will, under a settlement, belong to B if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate, or to lose the legacy.

(d) A, a person of the age of 18 domiciled in British India, but owning real property in England, to which C is heir at law, bequeaths a legacy to C, and, subject thereto, devises and bequeaths to B "all his property whatsoever and wheresoever," and dies under 21. The real property in England does not pass by the will. C may claim his legacy without giving up the real property in England.

170. A bequest for a man's benefit is, for the purpose of election, the same thing as a bequest made to himself.

Bequest for man's benefit how regarded for purpose of election.

Illustration.

The farm of Sultanpur Khurd being the property of B, A bequeathed it to C; and bequeathed another farm called Sultanpur Buzurg to his own executors with a direction that it should be sold, and the proceeds applied in payment of B's debts. B's farm

171. A person taking no benefit directly under the will, but deriving a benefit under it indirectly, is not put to his election.

Person deriving benefit indirectly not put to election.

Illustration.

The lands of Sultanpur are settled upon C for life, and after his death upon D, his only child. A bequeaths the lands of Sultanpur

(Part XXVI.—Of Legacies to Creditors and Portioners. Part XXVII.—Of Election.)

daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken. A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

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Illustrations.

(a) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(b) A bequeaths 40,000 rupees to B, his orphan niece whom he had brought up from her infancy. Afterwards, on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

PART XXVII.¹

OF ELECTION.

Circumstances in which election takes place.

167. Where a man, by his will, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and in the latter case he shall give up any benefits which may have been provided for him by the will.

Devolution of interest relinquished by owner.

168. The interest so relinquished shall devolve as if it had not been disposed of by the will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will.

Testator's belief as to his ownership immaterial.

169. This rule will apply whether the testator does or does not believe that which he professes to dispose of by his will to be his own.

Illustrations.

¹ See note on preceding page.

(Part XXVII.—Of Election.)

Illustrations.

(a) The farm of Sultanpur was the property of C. A bequeathed it to B, giving a legacy of 1,000 rupees to C. C has elected to retain his farm of Sultanpur, which is worth 800 rupees. C forfeits his legacy of 1,000 rupees, of which 800 rupees goes to B, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(b) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B. B must elect to give up the jewel, or to lose the estate.

(c) A bequeaths to B 1,000 rupees, and to C an estate which will, under a settlement, belong to B if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate, or to lose the legacy.

(d) A, a person of the age of 18 domiciled in British India, but owning real property in England, to which C is heir at law, bequeaths a legacy to C, and, subject thereto, devises and bequeaths to B "all his property whatsoever and wheresoever," and dies under 21. The real property in England does not pass by the will. C may claim his legacy without giving up the real property in England.

170. A bequest for a man's benefit is, for the purpose of election, the same thing as a bequest made to himself.

Bequest for man's benefit how regarded for purpose of election.

Illustration.

The farm of Sultanpur Khurd being the property of B, A bequeathed it to C, and bequeathed another farm called Sultan-

of Sultanpur Khurd in opposition to it.

171. A person taking no benefit directly under the will, but deriving a benefit under it indirectly, is not put to his election.

Person deriving benefit indirectly not put to election.

Illustration.

The lands of Sultanpur are settled upon C for life, and after his death upon D, his only child. A bequeaths the lands of Sultanpur

(Part XXVII.—Of Election.)

Sultanpur to B, and 1,000 rupees to C. C dies intestate shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the will. In that capacity he receives the legacy of 1,000 rupees and accounts to B for the rents of the lands of Sultanpur which accrued after the death of the testator and before the death of C. In his individual character he retains the lands of Sultanpur in opposition to the will.

Person taking in individual capacity under will may in other character elect to take in opposition.

172. A person who in his individual capacity takes a benefit under the will may in another character elect to take in opposition to the will.

Illustration.

The estate of Sultanpur is settled upon A for life, and after his death upon B. A leaves the estate of Sultanpur to D, and 2,000 rupees to B, and 1,000 rupees to C, who is B's only child. B dies intestate, shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultanpur in opposition to the will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the will.

Exception to the six last Rules.—Where a particular gift is expressed in the will to be in lieu of something belonging to the legatee which is also in terms disposed of by the will; if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the will.

Illustration.

Under A's marriage-settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultanpur during her life. A by his will bequeaths to his wife an annuity of 200*l.* during her life, in lieu of her interest in the estate of Sultanpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000*l.* The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity, but not the legacy of 1,000*l.*

When acceptance of

173. Acceptance of a benefit given by the will constitutes an election by the legatee to take under the

(Part XXVII.—Of Election.)

the will, if he had knowledge of his right to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

benefit given by will constitutes election to take under will.

Illustrations.

(a) A is owner of an estate called Sultanpur Khurd, and has a life-interest in another estate called Sultanpur Buzurg, to which upon his death, his son B will be absolutely entitled. The will of A gives the estate of Sultanpur Khurd to B, and the estate of Sultanpur Buzurg to C. B, in ignorance of his own right to the estate of Sultanpur Buzurg, allows C to take possession of it, and enters into possession of the estate of Sultanpur Khurd. B has not confirmed the bequest of Sultanpur Buzurg to C.

(b) B, the eldest son of A, is the possessor of an estate called Sultanpur. A bequeaths Sultanpur to C, and to B the residue of A's property. B, having been informed by A's executors that the residue will amount to 5,000 rupees, allows C to take possession of Sultanpur. He afterwards discovers that the residue does not amount to more than 500 rupees. B has not confirmed the bequest of the estate of Sultanpur to C.

174. Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the will without doing any act to express dissent.

Presumption arising from enjoyment by legatee for two years.

175. Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

Confirmation of bequest by act of legatee.

Illustration.

A bequeaths to B an estate to which she is entitled, and to C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the bequest of the estate to B.

176. If the legatee shall not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the will, the representatives shall, upon the expiration

When testator's representatives may call

(Part XXVII.—Of Election. Part XXVIII.—
Of Gifts in Contemplation of Death.)

upon legatee
to elect.

expiration of that period, require him to make his election ;

Effect of
non-com-
pliance.

and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the will.

Postpone-
ment of
election in
case of dis-
ability.

177. In case of disability the election shall be postponed until the disability ceases, or until the election shall be made by some competent authority.

PART XXVIII.

OF GIFTS IN CONTEMPLATION OF DEATH.

Property
transferable
by gift made
in contempla-
tion of death.
When gift
said to be
made in con-
templation of
death.

178. A man may dispose, by gift made in con-
templation of death, of any moveable property which
he could dispose of by will.

A gift is said to be made in contemplation of
death where a man, who is ill and expects to die
shortly of his illness, delivers to another the posses-
sion of any moveable property to keep as a gift in
case the donor shall die of that illness.

Each gift
re-umable.
When it
fails.

Such a gift may be resumed by the giver.

It does not take effect if he recovers from the
illness during which it was made ; nor if he survives
the person to whom it was made.

Illustrations.

(a) A, being ill, and in expectation of death, delivers to B,
to be retained by him in case of A's death,—

a watch :

a bond granted by C to A :

a bank-note :

a promissory note of the Government of India
endorsed in blank :

a bill of exchange endorsed in blank :

certain mortgage-deeds.

A dies of the illness during which he delivered these
articles

B is

(Part XXVIII.—Of Gifts in Contemplation of Death. Part XXIX.—Of Grant of Probate and Letters of Administration.)

B is entitled to—

the watch :

the debt secured by C's bond :

the bank-note :

the promissory note of the Government of India :

the bill of exchange :

the money secured by the mortgage-deeds.

(b) A, being ill and in expectation of death, delivers to B the key of a trunk or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents or to A's goods of bulk in the warehouse.

(c) A, being ill and in expectation of death, puts aside certain articles in separate parcels and marks upon the parcel respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

PART XXIX.¹

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

179. The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

Character and property of executor or administrator as such.

180. When a will has been proved and deposited in a Court of competent jurisdiction situated beyond

Administration with

the

As to grants of letters administration and probates to the Administrator-General—see the Administrators General Act 1874 (3 of the 1874), Genl. Acts, Vol. II. Nothing in Act 10 of 1865 is to be taken to supersede or affect the rights, duties and privileges of the Administrator-General—see *ibid.*, s. 66.

(Part XXVII.—Of Election. Part XXVIII.—
Of Gifts in Contemplation of Death.)

upon legatee
to elect.

expiration of that period, require him to make his election ;

Effect of
non-com-
pliance.

and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the will.

Postpone-
ment of
election in
case of dis-
ability.

177. In case of disability the election shall be postponed until the disability ceases, or until the election shall be made by some competent authority.

PART XXVIII.

OF GIFTS IN CONTEMPLATION OF DEATH.

Property
transferable
by gift made
in contempla-
tion of death.
When gift
said to be
made in con-
templation of
death.

178. A man may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by will.

A gift is said to be made in contemplation of death where a man, who is ill and expects to die shortly of his illness, delivers to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness.

Such a gift may be resumed by the giver.

Such gift
resumable.
When it
fails.

It does not take effect if he recovers from the illness during which it was made ; nor if he survives the person to whom it was made.

Illustrations.

(a) A, being ill, and in expectation of death, delivers to B, to be retained by him in case of A's death,—

a watch :

a bond granted by C to A :

a bank-note :

a promissory note of the Government of India
endorsed in blank :

a bill of exchange endorsed in blank :

certain mortgage-deeds.

A dies of the illness during which he delivered these articles

B is

(Part XXVIII.—Of Gifts in Contemplation of Death. Part XXIX.—Of Grant of Probate and Letters of Administration.)

B is entitled to—

- the watch :
- the debt secured by C's bond :
- the bank-note :
- the promissory note of the Government of India :
- the bill of exchange :
- the money secured by the mortgage-deeds.

(b) A, being ill and in expectation of death, delivers to B the key of a trunk or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents or to A's goods of bulk in the warehouse.

(c) A, being ill and in expectation of death, puts aside certain articles in separate parcels and marks upon the parcel respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

PART XXIX.¹

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

179. The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

Character and proper of executor administrator as such

180. When a will has been proved and deposited in a Court of competent jurisdiction situated beyond the

Administration with

Acts, Vol. II.

As to grants of letters administration and probates to the Administrator-General—see the Administrators General Act 1874 (2 of the 1874), Genl. Acts, Vol. II. Nothing in Act 10 of 1865 is to be taken to supersede or affect the rights, duties and privileges of the Administrator-General—see *ibid.*, s. 66.

(Part XXIX.—Of Grant of Probate and Letters of Administration.)

copy annexed of authenticated copy of will proved abroad.

the limits of the Province whether in the British dominions or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Probate only to appointed executor.

181. Probate can be granted only to an executor appointed by the will.

Appointment express or implied.

182. The appointment may be expressed or by necessary implication.

Illustrations.

(a) A wills that C be his executor if B will not, B is appointed executor by implication.

(b) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law C, and adds "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix. C is appointed executrix by implication.

(c) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words.—"I appoint my nephew my residuary legatee to discharge all demands against my will and
The nephew is appointed an

Persons to whom probate cannot be granted.

183. Probate cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

Grant of probate to several executors simultaneously or at different times.

184. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment and C an executor of it by implication. Probate may be granted to A and C at the same time or to A first and then to C, or to C first and then to A.

Separate probate of codicil dis-

185. If a codicil be discovered after the granted probate, a separate probate of that codicil may be granted

(Part XXIX.—Of Grant of Probate and Letters of Administration.)

granted to the executor, if it in no way repeals the appointment of executors made by the will. covered after grant of probate.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together. Procedure where different executors appointed by codicil.

186. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors. Accrual of representation to surviving executor.

187. No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction ²[in British India] shall have granted probate of the will under which the right is claimed, or shall have granted letters of administration ³[with the will or with a copy of an authenticated copy of the will annexed.] Right as executor or legatee when established.

188. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such. Effect of probate.

189. Letters of administration cannot be granted to any person who is a minor or is of unsound mind nor to a married woman without the previous consent of her husband. To whom administration may not be granted.

190. No right to any part of the property of a person who has died intestate can be established in any Court of Right to intestate's

¹ So far as regards the Administrator-General, the High Court at the Presidency town is a Court of competent jurisdiction within the limits of the Presidency. The powers of administration may be exercised by executors or administrators, Act, 1874 (2 of 1874), s. 14.

² In British India, by the Administrator-General—see *ibid*, s. 55. For Act 2 of 1874 see Genl. Acts, Vol. II.

³ The words "in British India" were substituted for the words "within the Province" by the Probate and Administration Act, 1903 (8 of 1903), Genl. Acts, Vol. VI.

⁴ The words in brackets at the end of s. 187 were substituted for the words and figures "under the 180th section" by the Probate and Administration Act, 1903, (8 of 1903).

⁵ S. 190 does not apply to any Christian who has died intestate—see Act of Estates Act, 1901, (7 of 1901), Genl. Acts, Vol. I.

(Part XXIX.—Of Grant of Probate and Letters of Administration.)

property when established.

of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.

Effect of letters of administration.

191. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Acts not Validated by administration.

192. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Grant of administration where executor has not renounced.

193. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship;

Exception.

except that, when one or more of several executors have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Form and effect of renunciation of executorship.

194. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Procedure where executor renounces or fails to accept within time limited.

195. If the executor renounce, or fail to accept the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Grant of administration to universal residuary legatees.

196. When the deceased has made a will, but has not appointed an executor, or

when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when

(Part XXIX.—Of Grant of Probate and Letters of Administration.)

when the executor dies after having proved the will, but before he has administered all the estate of the deceased;

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

197. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Right to administration of representative of deceased residuary legatee.

198. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

199. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next of kin to accept or refuse letters of administration.

Citation before grant of administration to legatee other than universal or residuary.

200. When the deceased has died intestate, those who are connected with him, either by marriage or by consanguinity, are entitled to obtain letters of administration of his estate and effects in the order and according to the rules hereinafter stated.

Order in which connections entitled to administer.

201. If the deceased has left a widow, administration shall be granted to the widow, unless the Court shall see cause to exclude her, either on the

Administration to widow unless Court see

ground

(Part XXIX.—Of Grant of Probate and Letters of Administration.)

cause to
exclude her.

ground of some personal disqualification, or because she has no interest in the estate of the deceased.

Illustrations.

(a) The widow i
has been barred by l
husband's estate. T
administration.

(b) The widow has married again since the decease of her husband. This is not good cause for her exclusion.

Association
with widow
in adminis-
tration.

202. If the Judge think proper, he may associate any person or persons with the widow in the administration who would be entitled solely to the administration if there were no widow.

Administra-
tion where
no widow or
widow ex-
cluded.

203. If there be no widow, or if the Court see cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate :

Proviso,

Provided that, when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to administration.

Title of
kindred to
administra-
tion
Right of
widower to
administra-
tion of wife's
estate.
Grant of
administra-
tion to cre-
ditor.

204. Those who stand in equal degree of kindred to the deceased are equally entitled to administration.

205. The husband surviving his wife has the same right of administration of her estate as the widow has in respect of the estate of her husband.

206. When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration, and willing to act, they may be granted to a creditor.

Administra-
tion where
property left
in British
India.

207. Where the deceased has left property in British India, letters of administration must be granted according to the foregoing rules, although he may have been a domiciled inhabitant of a country in which the law relating to testate and intestate succession differs from the law of British India.

(Part XXX.—Of Limited Grants.)

PART XXX.

OF LIMITED GRANTS.

(a) *Grants limited in Duration.*

208. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft limited until the original or a properly authenticated copy of it be produced.

Probate of copy or draft of lost will.

209. When the will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents if they can be established by evidence.

Probate of contents of lost or destroyed will.

210. When the will is in the possession of a person residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

Probate of copy where original exists.

211. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will, or an authenticated copy of it be produced.

Administration until will produced.

(b) *Grants for the Use and Benefit of others having Right.*

212. When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration, with the will annexed, may be granted to the attorney of the absent executor, for the use and benefit of his principal, limited until he

Administration, with will annexed, to attorney of absent executor.

shall

(Part XXX.—Of limited Grants.)

other parties, touching the matters at issue in the said cause or suit, and until a final decree shall be made therein and carried into complete execution.

Administra-
tion limited
to purpose of
becoming
party to suit
to be brought
against ad-
ministrator.

223. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administration to whom the same has been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, it shall be lawful for such Court to grant, to any person whom it may think fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Administra-
tion limited
to collection
and preserva-
tion of de-
ceased's pro-
perty.

224. In any case in which it may appear necessary for preserving the property of a deceased person, the Court, within whose district any of the property is situate, may grant to any person, whom such Court may think fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Appointment,
as adminis-
trator, of
person other
than one who,
under ordi-
nary circum-
stances,
would be
entitled to
administra-
tion.

225. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, where the executor shall, at the time of the death of such person, be resident out of the Province, and it shall appear to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who, under ordinary circumstances, would be entitled to a grant of administration, it shall be lawful for the Judge, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, to appoint such person as he shall think fit to be administrator.

and in every such case letters of administration may be limited or not as the Judge shall think fit.

(d) Grants

(Part XXX.—Of limited Grants.)

(d) Grants with Exception.

226. Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to such exception.

Probate or administration, with will annexed subject to, exception. Administration with exception.

227. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

(e) Grants of the Rest.

228. Whenever a grant with exception, of probate, or letters of administration with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

Probate or administration of rest.

(f) Grant of Effects unadministered.

229. If the executor to whom probate has been granted have died, leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Grant of effects unadministered.

230. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants, might have been made.

Rules as to grants of effects unadministered.

231. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

Administration when limited grant expired and still some part of estate unadministered.

(g) Alteration

(Part XXX.—Of limited Grants.)

(g) *Alteration in Grants.*

What errors
may be recti-
fied by Court.

232. Errors in names and descriptions, or in setting forth the time and place of the deceased's death or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

Procedure
where codicil
discovered
after grant of
administra-
tion with will
annexed.

233. If after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

(h) *Revocation of Grants.*

Revocation or
annulment
for just cause
"Just cause."

234. The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation. — Just cause is —

1st,—that the proceedings to obtain the grant were defective in substance ;

2nd,—that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case ;

3rd,—that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently ;

4th,—that the grant has become useless and inoperative through circumstances ;

5th,—that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XXXIV of this Act or has exhibited under that Part an inventory or account which is untrue in a material respect.]

Illustrations.

¹ The fifth clause of the *Explanation* to s. 234 was added by the Indian Succession Law Amendment Act, 1839 (6 of 1839), s. 2 Genl. Acts, Vol. IV.

(Part XXX.—Of limited Grants. Part XXXI.—
Of the Practice in granting and revoking Pro-
bates and Letters of Administration.)

Illustrations.

(a) The Court by which the grant was made had no jurisdiction.

(b) The grant was made without citing parties who ought to have been cited.

(c) The will of which probate was obtained was forged or revoked.

(d) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(e) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(f) Since probate was granted, a later will has been discovered.

(g) Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.

(h) The person to whom probate was, or letters of administration were granted, has subsequently become of unsound mind.

PART XXXI.

OF THE PRACTICE IN GRANTING AND REVOKING
PROBATES AND LETTERS OF ADMINISTRATION.

235. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

Jurisdiction of District Judge in granting and revoking probates, etc.

¹ 235A. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit, to act for the District Judge as Delegates² to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

Power to appoint Delegates of District Judge to deal with non-contentious cases.

Provided

¹ S. 235A was added by the District Delegates Act, 1881 (6 of 1881), s. 2, Genl. Acts, Vol. III.

² For notification appointing such delegates in—

(1) Assam, see Assam R. & O.,

(2) Madras, see Mad. R. & O., Vol. I.

(Part XXXI.—Of the Practice in granting and revoking Probates and Letters of Administration.)

made to Judge of district in which deceased had no fixed abode.

abode at the time of his death, it shall be in the discretion of the Judge to refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, to grant them absolutely, or limited to the property within his own jurisdiction.

Probate and letters of administration may be granted by Delegate.

¹ 241A. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death resided within the jurisdiction of such Delegate.

Conclusive-ness of probate or letters of administration.

242. Probate or letters of administration shall have effect over all the property and estate, moveable or immoveable, of the deceased, throughout the Province in which the same is ²[or are] granted,

and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him,

and shall afford full indemnity to all debtors, paying their debts and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted :

³[Provided that probates and letters of administration granted--

(a) by a High Court, or

(b) by

¹ S. 241A was added by the District Delegates Act, 1891 (6 of 1891), s. 3, Genl. Acts, Vol. III.

² The words "or are" were inserted by the Amending Act, 1891 (12 of 1891), Genl. Acts, Vol. IV.

³ The present proviso to s. 242 was added by s. 2 (2) of the Probate and

... added to s. ... granted by a ... unless otherwise directed by the grant, have like effect throughout the whole of British India."

(Part XXXI.—Of the Practice in granting and revoking Probates and Letters of Administration.)

(b) by a District Judge, where the deceased at the time of his death had his fixed place of abode situate within the jurisdiction of such Judge, and such Judge certifies that the value of the property and estate affected beyond the limits of the Province does not exceed ten thousand rupees,

shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.]

1242A. (1) Where probate or letters of administration has or have been granted by a High Court or District Judge with the effect referred to in the proviso to section 242, the High Court or District Judge shall send a certificate thereof to the following Courts, namely :—

Transmission to High Courts of certificate of grants under proviso to section 242.

(a) when the grant has been made by a High Court, to each of the other High Courts,

(b) when the grant has been made by a District Judge, to the High Court to which such District Judge is subordinate and to each of the other High Courts.

(2) Every certificate referred to in sub-section (1) shall be to the following effect, namely :—

“I, A. B., Registrar [or as the case may be] of the High Court of Judicature at [or as the case may be], hereby certify that on the day of , the High Court of Judicature at [or as the case may be] granted probate of the will [or letters of administration of the estate] of C. D., late of , deceased, to E. F. of and G. H. of , and that such probate [or letters] has [or have] effect over

¹S. 242A was inserted by s. 2 (3) of the Probate and Administration Act, 1903 (S. of 1903). S. 3 of Act 13 of 1875, by which the former s. 212A was added to the Act, was repealed by s. 4 of Act 8 of 1903, Genl. Acts, Vol. V.

(Part XXXI.—Of the Practice in granting and revoking Probates and Letters of Administration.)

over all the property of the deceased throughout the whole of British India,"

and such certificate shall be filed by the High Court receiving the same.

(3) Where any portion of the assets has been stated by the petitioner, as hereinafter provided in sections 244 and 246, to be situate within the jurisdiction of a District Judge in another Province, the Court required to send the certificate referred to in sub-section (1) shall send a copy thereof to such District Judge, and such copy shall be filed by the District Judge receiving the same.

Conclusive-
ness of appli-
cation for
probate or
administra-
tion if pro-
perly made
and verified.

243. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration ;

and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

Petition for
probate.

244. Application for probate shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will annexed and stating—

the time of the testator's death,

that the writing annexed is his last will and testa-
ment,

that it was duly executed,

¹ [the amount of assets which are likely to come
to the petitioner's hands, and

that

¹ These clauses in s. 244 were substituted for the words "and that the petitioner is the executor therein named," by the Indian Succession Law Amendment Act, 1889 (6 of 1889), s. 3, Genl. Acts, Vol. IV.

(Part XXXI.—Of the Practice in granting and revoking Probates and Letters of Administration.)

that the petitioner is the executor named in the will];

and in addition to these particulars, when the application is to the District Judge, the petition shall further state that the deceased at the time of his death had his fixed place of abode, or had some property, moveable or immoveable, situate within the jurisdiction of the Judge;

¹[and, when the application is to a District Delegate the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate.]

²[Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another Province, the petition shall further state the amount of such assets in each Province and the District Judges within whose jurisdiction such assets are situate.]

245. In cases wherein the will is written in any language other than English or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or, if the will be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner—

In what case translation of will to be annexed to petition. Verification of translation by person other than Court translator.

"I (A. B.) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

246. Application

¹This paragraph was added to s. 214 by the District Delegates Act, 1881 (6 of 1881), s. 4, Genl. Acts, Vol. III.

²The last paragraph was added to s. 214 by s. 2 (f) of the Probate and Administration Act, 1903 (8 of 1903), Genl. Acts, Vol. V.

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over all the property of the deceased throughout the whole of British India,"

and such certificate shall be filed by the High Court receiving the same.

(3) Where any portion of the assets has been stated by the petitioner, as hereinafter provided in sections 244 and 246, to be situate within the jurisdiction of a District Judge in another Province, the Court required to send the certificate referred to in sub-section (1) shall send a copy thereof to such District Judge, and such copy shall be filed by the District Judge receiving the same.

Conclusive-
ness of appli-
cation for
probate or
administra-
tion if pro-
perly made
and verified.

243. The application for probate or letters of administration if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration ;

and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

Petition for
probate

244. Application for probate shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will annexed and stating—

the time of the testator's death,

that the writing annexed is his last will and testament,

that it was duly executed,

¹ [the amount of assets which are likely to come to the petitioner's hands, and

that

¹ These clauses in s. 244 were substituted for the words "and that the petitioner is the executor therein named," by the Indian Succession Law Amendment Act, 1889 (6 of 1889), s. 3, Genl. Acts, Vol. IV.

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that the petitioner is the executor named in the will];

and in addition to these particulars, when the application is to the District Judge, the petition shall further state that the deceased at the time of his death had his fixed place of abode, or had some property, moveable or immovable, situate within the jurisdiction of the Judge;

[and, when the application is to a District Delegate the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate.]

[Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another Province, the petition shall further state the amount of such assets in each Province and the District Judges within whose jurisdiction such assets are situate.]

245. In cases wherein the will is written in any language other than English or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or, if the will be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner—

In what cases translation of will to be annexed to petition. Verification of translation by person other than Court translator.

"I (A. B.) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

246. Application

¹This paragraph was added to s. 244 by the District Delegates Act, 1881 (6 of 1881), s. 4, Genl. Acts, Vol. III.

²The last paragraph was added to s. 244 by s. 2 (4) of the Probate and Administration Act, 1903 (8 of 1903), Genl. Acts, Vol. V.

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Petition for letters of administration.

246. Application for letters of administration shall be made by petition distinctly written as aforesaid and stating—

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

that the deceased left some property within the jurisdiction of the District Judge² [or District Delegate] to whom the application is made, and

the amount of assets which are likely to come to the petitioner's hands,

³[and, when the application is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate.]

⁴[Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another Province, the petition shall further state the amount of such assets in each Province and the District Judges with whose jurisdiction such assets are situate.]

246A. (1) Every

¹ As to the particulars to be stated where the Administrator-General applies, see s. 246, Act of 1874.

² These words in s. 246 were added by the District Delegates Act, 1881 (6 of 1881), s. 2, Genl. Acts, Vol. III.

³ These words in s. 246 were added by the District Delegates Act, 1881 (6 of 1881), s. 2, Genl. Acts, Vol. III.

⁴ The last paragraph was added to s. 246 by s. 2 (4) of the Probate and Administration Act, 1903 (8 of 1903), Genl. Acts, Vol. V.

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¹ 246A. (1) Every person applying to any of the Courts mentioned in the proviso to section 242 for probate of a will or letters of administration of an estate intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by section 244 and section 246 of this Act, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

Addition to statement in petition, etc. probate or letters of administration in certain cases.

or, where any such application has been made, the court to which it was made, the person or persons by whom it was made and the proceedings (if any) had thereon.

(2) The Court to which any such application is made under the proviso to section 242, may, if it thinks fit, reject the same.

247. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect:—

Petition for probate or administration to be signed and verified.

“I (A. B.), the petitioner in the above petition declare that what is stated therein is true to the best of my information and belief.”

248. Where

¹ The present s. 246A was inserted by s. 2 (5) of the Probate and

(if any) had thereon.

And the High Court to which any application is made under the proviso to section 242 of this Act may, if it think fit, reject the same.”

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Verification of petition for probate, by one witness to will.

248. Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the will (when procurable) in the manner or to the effect following:—

“I (C. D.), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (or mark) thereto (as the case may be) (or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence).”

Punishment for false averment in petition or declaration.

249. If any petition or declaration which is hereby required to be verified shall contain any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law¹ for the time being in force for the punishment of giving or fabricating false evidence.

District Judge may examine petitioner in person,

250. In all cases it shall be lawful for the District Judge² [or District Delegate,] if he shall think proper, to examine the petitioner in person, upon oath or solemn affirmation, and also

require further evidence

to require further evidence of the due execution of the will or the right of the petitioner to the letters of administration, as the case may be, and

and issue citations to inspect proceedings.

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

Publication of citation.

The citation shall be fixed up in some conspicuous part of the Courthouse, and also in the office of the Collector of the district and otherwise published or made known in such manner as the Judge³ [or District Delegate] issuing the same may direct.

[Where

¹ See the Indian Penal Code (Act 45 of 1860). Ch XI, Genl. Acts, Vol. I.

² These words in s. 250 were inserted by the District Delegates Act, 1891 (6 of 1891), s. 9 Genl. Act, Vol. III.

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¹ [Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another Province, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself and shall certify such publication to the District Judge who issued the citation.]

² 251. Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate ;

Caveats against grant of probate or administration.

and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge ;

and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

252. The caveat shall be to the following effect :—

Form of caveat.

“ Let nothing be done in the matter of the estate of *A. B.*, late of _____, deceased, who died on the _____ day of _____ at _____, without notice to *C. D.* of _____.”

253. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge ³ [or office] to whom the application has been made ³ [or notice has been given of its entry with

After entry of caveat, no proceeding taken on petition until after notice to caveator.

some

of the Probate and
251 by s. 5 of the
III.
District Delegates

(Part XXXI.—Of the Practice in granting and revoking Probates and Letters of Administration.)

some other Delegate,] until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

District Delegate when not to grant probate or administration.

¹253A. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By “contention” is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

Power to transmit statement to District Judge in doubtful cases where no contention.

¹253B. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Procedure where there is contention, or District Delegate thinks pro-

¹253C. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order

that

¹ Sec. 253A, 253B and 253C were added by s. 7 of the District Delegates Act, 1881 (6 of 1881), Genl. Acts, Vol. III.

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king Probates and Letters of Administra-
tion.)

that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of Justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

bate or letters of administration should be refused in his Court.

254. When it shall appear to the Judge¹ [or District Delegate] that probate of a will should be granted, he will grant the same under the seal of his Court in manner following —

Grant of probate to be under seal of Court.

"I, _____, Judge of the District of _____, [or Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction,*)] hereby make known that on the _____ day of _____ in the year _____, the last will of _____, late of _____, a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will was granted to _____, the executor in the said will named, [he having undertaken to administer the same, and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint].

Form of such grant.

255. And

¹ These words in s. 254 were inserted by s. 9 of the District Delegates Act, 1881 (6 of 1881), Genl Acts, Vol. III.

² These words in s. 254 were inserted by s. 8 of the District Delegates Act, 1881 (6 of 1881).

³ The words from "he having" to the end of s. 254 were substituted

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Grant of letters of administration to be under seal of Court.

255. And wherever it shall appear to the District Judge ¹[or District Delegate] that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he will grant the same under the seal of his Court in manner following:—

Form of such grant.

“I, _____, Judge of the District of _____,
²[or Delegate appointed for granting probate or, letters of administration in (*here insert the limits of the Delegate's Jurisdiction*)], hereby make known that on the _____ day of _____ letters of administration (with or without the will annexed, as the case may be), of the property and credits of _____, late of _____, deceased, were granted to _____, the father (or as the case may be) of the deceased, ³[he having undertaken to administer the same and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint].

Administration-bond.

256. “[Every person to whom any grant of letters of _____ of _____]”

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of administration [other than a grant under section 212 is committed] shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge shall from time to time by any general or special order direct.

257. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, Assignment of administration-bond.

and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit,

assign the same to some person, his executors or administrators,

who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

258. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death. Time for grant of probate and administration.

259. Every District Judge [or District Delegate] shall file and preserve all original wills, of which probate or letters of administration with the will annexed may be granted by him, among the records of Filing of original wills of which probate or administration with

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will annexed granted.

of his Court, until some public registry for wills is established ;

and the local Government shall make 'regulations for the preservation and inspection of the wills so filed as aforesaid.

Grantee of probate or administration alone to sue, etc., until same revoked.

260. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

Procedure in contentious cases.

261. In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the 'Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant. XIV of

Payment to executor or administrator before probate or administration revoked.

262. Where any probate is or letters of administration are revoked, all payments *bonâ fidé* made to any executor or administrator under such probate or administration before the revocation thereof, shall notwithstanding such revocation be a legal discharge to the person making the same ;

Right of such executor or administrator to recomp himself.

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments

¹ For rules in force in—

(1) Assam, see Assam R. & O.,

(2) Burma, see Bur. R. M.,

(3) Bengal (including the districts since transferred to Eastern Bengal and Assam), see Ben. Stat. R. & O., Vol. I.

(4) Malras, see Mad. R. & O., Vol. I Pt. II,

(5) Punjab, see Panj. List of R. & O., and

(6) United Provinces, see U. P. List of R. & O., Vol. I.

² See now the Code of Civil Procedure, 1909 (Act 5 of 1909), Genl. Act, Vol. VI.

(Part XXXI.—Of the Practice in granting and revoking Probates and Letters of Administration. Part XXXII.—Of Executors of their own Wrong.)

payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

1852. 263. Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the 'Code of Civil Procedure applicable to appeals. Appeals from orders of District Judge.

264. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge. Concurrent jurisdiction of High Court.

PART XXXII.

OF EXECUTORS OF THEIR OWN WRONG.

265. A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong. Executor of his own wrong.

Exceptions.—*First.*—Intermeddling with the goods of the deceased for the purpose of preserving them or providing for his funeral or for the immediate necessities of his family or property, does not make an executor of his own wrong.

Second.—Dealing in the ordinary course of business with goods of the deceased from another does not make an executor of his own wrong.

Illustrations.

(a) A uses or gives away or sells some of the goods of the deceased, or takes them to satisfy his own debt or legacy or receives payment of the debts of the deceased. He is an executor of his own wrong.

(b) A having been appointed agent by the deceased in his lifetime to collect his debts and sell his goods, continues to

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Genl. Acts, Vol. VI.

(Part XXXII.—Of Executors of their own Wrong.
Part XXXIII.—Of the Powers of an Executor
or Administrator.)

to do so after he has become aware of his death. He is an executor of his own wrong in respect of acts done after he has become aware of the death of the deceased

(c) A sues as executor of the deceased, not being such. He is an executor of his own wrong.

Liability of
executor of
his own
wrong.

266. When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands after deducting payments made to the rightful executor or administrator, and payments made in a due course of administration.

PART XXXIII.

OF THE POWERS OF AN EXECUTOR OR ADMINIS-
TRATOR.

In respect of
causes of
actions surviv-
ing deceased,
and rents due
at death.

267. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and to distrain for all rents due to him at the time of his death, as the deceased had when living.

Demands and
rights of ac-
tion of or
against de-
ceased sur-
vive to and
against exe-
cutor or
administra-
tor.

268. All demands whatsoever and all rights to prosecute or defend any action or special proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code or other personal injuries not causing the death of the party: and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.

Illustrations.

(a) A collision takes place on a Railway in consequence of some neglect or default of the official, and a passenger is severely hurt

(Part XXXIII.—Of the Powers of an Executor or Administrator.)

hort, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive

(b) A sues for divorce. A dies. The cause of action does not survive to his representative.

269. An executor or administrator has power to dispose of the property of the deceased, either wholly or in part, in such manner as he may think fit.

Power of executor or administrator to dispose of property.

Illustrations.

(a) The deceased has made a specific bequest of part of his property. The executor not having assented to the bequest, sells the subject of it. The sale is valid.

(b) The executor in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased. The mortgage is valid.

270. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Purchase by executor or administrator of deceased's property. Powers of several executors or administrators exercisable by one.

271. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the will, or taken out administration.

Illustrations.

(a) One of several executors has power to release a debt due to the deceased.

(b) One has power to surrender a lease.

(c) One has power to sell the property of the deceased moveable or immoveable.

(d) One has power to assent to a legacy.

(e) One has power to endorse a promissory note payable to the deceased.

(f) The will appoints A, B, C, and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

272. Upon the death of one or more of several executors or administrators all the power of the office become vested in the survivors or survivor.

Survival of powers on death of one of several executors or administrators.

273. The

(Part XXXIII.—Of the Powers of an Executor or Administrator. Part XXXIV.—Of the Duties of an Executor or Administrator.)

Powers of administrator of effects unadministered.

273. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator during minority.

274. An administrator during minority has all the powers of an ordinary administrator.

Powers of married executrix or administratrix.

275. When probate or letters of administration have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

PART XXXIV.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

As to deceased's funeral.

276. It is the duty of an executor to perform the funeral of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

Inventory and account.

277. (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character,

and shall in like manner, within one year from the grant or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come

¹ This section was substituted for the original s. 277 by s. 7 of the Indian Succession Law Amendment Act, 1939 (5 of 1939), Genl. Acts, Vol. IV.

(Part XXXIV.—Of the Duties of an Executor or Administrator.)

come to his hands and the manner in which they have been applied or disposed of.

(2) The High Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.

(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the 'Indian Penal Code.

(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code.

² 277A. In all cases where a grant has been made of probate or letters of administration intended to have effect throughout the whole of British India, the executor or administrator shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India, and the value of such property situate in each province shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

Inventory to include property in any part of British India in certain cases.

278. The

¹ Genl. Acts, Vol. I.

² The present section 277A was inserted by s. 2 (7) of the Probate and Administration Act, 1903 (8 of 1903). Genl. Acts, Vol. VI, s. 5 of Act 13 of 1875 by which the original s. 277A was added to the Act, was repealed by s. 4 of Act 8 of 1903. That section was as follows:—

"In all cases where a grant has been made of probate or letters of administration intended to have effect throughout the whole of British India,

(Part XXXIV.—Of the Duties of an Executor or Administrator.)

As to property of, and debts owing to deceased.

278. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

Expenses to be paid before all debts.

279. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid next after such expenses.

280. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Wages for certain services to be next paid, and then other debts.

281. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased.

Save as aforesaid, all debts to be paid equally and rateably.

282. Save as aforesaid, no creditor is to have a right of priority over another, by reason that his debt is secured by an instrument under seal, or on any other account.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably as far as the assets of the deceased will extend.

Application of moveable property to payment of debts where domicile not in British India.

283. If the domicile of the deceased was not in British India, the application of his moveable property to the payment of his debts is to be regulated by the law of ¹ [British India].

* * * * *

284. No

¹ The words "British India" in s. 243 were substituted for the words "the country in which he was domiciled," by s. 9 (1) of the Indian Succession Law Amendment Act, 1880 (6 of 1880), Genl. Acts, Vol. IV.

² The Illustration to s. 243 was repealed by s. 9 (2) of the same Act.

(Part XXXIV.—Of the Duties of an Executor or Administrator.)

284. No creditor who has received payment of a part of his debt by virtue of the last preceding section shall be entitled to share in the proceeds of the immoveable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

Creditor paid in part under section 283 to bring payment into account before sharing in proceeds of immoveable property.

Illustration

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 5,000 rupees, and immoveable property to the value of 10,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The creditors holding instruments under seal receive half of their debts out of the proceeds of the moveable estate. The proceeds of the immoveable estate are to be applied in payment of the debts on instruments not under seal until one-half of such debts has been discharged. This will leave 5,000 rupees which are to be distributed rateably amongst all the creditors without distinction, in proportion to the amount which may remain due to them.

285. Debts of every description must be paid before any legacy.

Debts to be paid before legacies.

286. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Executor or administrator not bound to pay legacies without indemnity.

287. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions,

Abatement of general legacies.

and the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Executor not to pay one legatee in preference to another.

288. Where there is a specific legacy, and the assets are sufficient for the payment of debts and

Non-abatement of specific legacy when

necessary

(Part XXXIV.—Of the Duties of an Executor or Administrator. Part XXXV.—Of the Executor's Assent to a Legacy.)

assets
sufficient to
pay debts.

Right under
demonstra-
tive legacy
when assets
sufficient to
pay debts and
necessary
expenses.

necessary expenses, the thing specified must be delivered to the legatee without any abatement.

289. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Rateable
abatement of
specific lega-
cies

290. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Illustration.

A has bequeathed to B a diamond ring valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

Legacies
treated as
general for
purpose of
abatement.

291. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

PART XXXV.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

Assent neces-
sary to com-
plete legatee's
title.

292. The assent of the executor is necessary to complete a legatee's title to his legacy.

Illustrations.

(a) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has
no

(Part XXXV.—Of the Executor's Assent to a Legacy.)

no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(b) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

293. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Effect of executor's assent to specific legacy.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Nature of assent.

Illustrations.

(a) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

294. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Conditional assent.

Illustrations.

(a) A bequeaths to B his lands of Sultanpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the

bequest

(Part XXXV.—Of the Executor's Assent to a Legacy)

bequest, on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

Assent of executor to his own legacy.

295. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner, be expressed or implied.

Implied assent.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Illustration.

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

Effect of executor's assent.

296. The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustrations.

(a) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser and completes his title to the legacy.

(b) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to his legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

Executor when to deliver legacies.

297. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

(Part XXXVI.—Of the Payment and Apportionment of Annuities. Part XXXVII.—Of the Investment of Funds to provide for Legacies.)

PART XXXVI.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

298. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

Commencement of annuity when no time fixed by will.

299. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death; and shall, if the executor think fit, be paid when due, but the executor shall not be bound to pay it till the end of the year.

When annuity, to be paid quarterly or monthly, first falls due.

300. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

Dates of successive payments when first payment directed to be made within given time or on day certain.

and, if the annuitant should die in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

Apportionment where annuitant dies between times of payment.

PART XXXVII.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

301. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds

Investment of sum bequeathed where legacy not specific given for life.

(Part XXXVII.—Of the Investment of Funds to provide for Legacies.)

ceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of general legacy, to be paid at future time.

Intermediate interest.

Procedure when no fund charged with, or appropriated to, annuity.

302. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

The intermediate interest shall form part of the residue of the testator's estate.

303. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased, or,

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

Transfer to residuary legatee of contingent bequest.

304. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee on his giving sufficient security for the payment of the legacy if it shall become due.

Investment of residue bequeathed for life, without direction to invest in particular securities.

305. Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in such securities as the High Court may for the time being regard as good securities shall be converted into money and invested in such securities.

Investment of residue bequeathed for life, with direction to invest in specified securities.

306. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

307. Such

(Part XXXVII.—Of the Investment of Funds to provide for Legacies.)

307. Such conversion and investment as are contemplated by the two last preceding sections shall be made at such times and in such manner as the executor shall in his discretion think fit;

Time and manner of conversion and investment.

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of four per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Interest payable until investment.

308. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge, by whom¹ [or by whose District Delegate] the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards :

Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account :

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid :

and such money when paid in shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

PART XXXVIII.

¹ These words in s. 308 were inserted by s. 8 of the District Delegates Act, 1881 (46 of 1881), Genl. Acts, Vol. III.

(Part XXXVIII.—Of the Produce and Interest of Legacies.)

PART XXXVIII.

OF THE PRODUCE AND INTEREST OF LEGACIES.

Legatee's title to produce of specific legacy.

309. The legatee of a specific legacy is entitled to the clear produce thereof if any, from the testator's death,

Exception.—A specific bequest contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(a) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn or some of the ewes produce lambs. The wool and lambs are the property of B.

(b) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(c) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he completes that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, form part of the residue.

Residuary legatee's title to produce of residuary fund.

310. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations.

(a) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b) The

(Part XXXVIII.—Of the Produce and Interest of Legacies.)

(b) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he completes that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisturbed of.

311. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death. Interest when no time fixed for payment of general legacy.

Exception.—(1) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

312. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate. Interest when time fixed.

Explanation.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance.

313. The rate of interest shall be four per cent. per annum. Rate of interest.

314. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration No interest on arrears of annuity within first year after expiration

(Part XXXVIII.—Of the Produce and Interest of Legacies. Part XXXIX.—Of the Refunding of Legacies.)

testator's death.

expiration of that year may have been fixed by the will for making the first payment of the annuity.

Interest on sum to be invested to produce annuity.

315. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

PART XXXIX.

OF THE REFUNDING OF LEGACIES.

Refund of legacy paid under Judge's orders.

316. When an executor has paid a legacy under the order of a Judge, he is entitled to call upon the legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

317. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

Refund which legacy has become due on performance of condition within further time allowed under section 124.

318. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has been allowed under the 124th section for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

When each legatee compellable to refund in proportion.

319. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

Distribution of assets.

320. Where an executor or administrator has given such notices as would have been given by the

High

(Part XXXIX.—Of the Refunding of Legacies.)

High Court in an administration-suit for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he shall not have had notice at the time of such distribution ;

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively. Creditor may follow assets.

321. A creditor who has not received payment of his debt may * * * call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies; and whether the payment of the legacy by the executor was voluntary or not. Creditor may call upon legatee to refund.

322. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor. When legatee, not satisfied or compelled to refund under section 321, cannot oblige one paid in full to refund.

323. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, When unsatisfied legatee must first proceed

(Part XXXIX.—Of the Refunding of Legacies.)

against executor, if solvent.

refund, first proceed against the executor, if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

Limit to refunding of one legatee to another.

324. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and, if properly administered, would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

325. The refunding shall in all cases be without interest.

Residue after usual payments to be paid to residuary legatee.

326. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Transfer of assets from British India to executor or administrator in country of domicile for distribution.

326A.¹ Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death,

and there have been a grant of probate or letters of administration in British India with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country,

the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 320, and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of,

may,

¹ S. 326A was inserted by s. 9 of the Probate and Administration Act, 1929 (2 of 1929), General Act, Vol. IV.

(Part XL.--Of the Liability of an Executor or Administrator for Devastation.)

may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

PART XL.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

327. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Liability of executor or administrator for devastation.

Illustrations.

(a) The executor pays out of the estate an unfounded claim. He is liable to make good the loss.

(b) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss.

(c) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

328. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Liability of executor or administrator for neglect to get in any part of property.

Illustrations.

(a) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount.

(b) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount.

PART XLI.

PART XLI.

MISCELLANEOUS.

329. [Stamping and Fees.] Rep. by the Court-fees Act, 1870 (VII of 1870).

330. [Saving as to Administrator-General] Rep. by the Administrator-General's Act, 1867 (XXIV of 1867).

Succession to property of Hindus, &c., and certain wills, intestacies and marriages not effected.

331. The provisions of this Act shall not apply to intestate or testamentary succession to the property of any ¹ Hindu, Muhammadan or Buddhist; nor shall they apply to any will made, or any intestacy occurring, before the first day of January, 1866.

The 4th section shall not apply to any marriage contracted before the same day.

Power of Governor General in Council to exempt any race, sect or tribe in British India from operation of Act.

332. The Governor General of India in Council shall from time to time have power, by an order, either retrospectively from the passing of this Act or prospectively, to ² exempt from the operation of the whole or any part of this Act the members of any,

¹ As to wills of Hindus, Jains, Sikhs and Buddhists in the Lower

Vol. II.

As to probate and letters of administration in the case of Hindus, see the III. of the

t, dated

R. & O.

As to probate and letters of administration in the case of persons so exempted, see the Probate and Administration Act, 1881 (5 of 1881), Genl. Act, Vol. III.

(Part XLI.—Miscellaneous.)

any race, sect or tribe in British India, or any part of such race, sect or tribe, to whom he may consider it impossible or inexpedient to apply the provisions of this Act, or of the part of the Act mentioned in the order.

The Governor General of India in Council shall also have power from time to time to revoke such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations made under this section shall be published in the Gazette of India.

1333. (1) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

Surrender of
revoked pro-
bate or
letters of ad-
ministration.

(2) If such person wilfully and without reasonable cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment of either description for a term which may extend to three months, or with both.

SCHEDULE.

[STAMP AND FEES.]

Rep. by the Court-fees Act, 1870 (VII of 1870).

¹ S. 333 was added by s. 10 of Indian Succession Law Amendment Act, 1889 (6 of 1889), Genl. Acts, Vol. III.

(Part XLI.—Miscellaneous)

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tate in Presidency-town, when taken charge of by the police for safe custody, see the Administrator General's Act, 1874 (2 of 1874), Genl. Acts, Vol. II.

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
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LEGISLATIVE DEPARTMENT.

THE SUCCESSION CERTIFICATE ACT, 1889
(VII OF 1889),

AS MODIFIED UP TO 1ST JUNE, 1910.

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1910

[Price Five Annas and Six Pies.]



ACT NO. VII OF 1889.¹

[8th March, 1889.]

An Act to facilitate the collection of debts on successions and afford protection to parties paying debts to the representatives of deceased persons.

[As modified up to 1st June, 1910.]

WHEREAS it is expedient to facilitate the collection of debts on successions and afford protection to parties paying debts to the representatives of deceased persons ; It is hereby enacted as follows :—

1. (1) This Act may be called the Succession Certificate Act, 1889.

Title, commencement, extent and application

(2) It shall come into force on the first day of May, 1889 ; and

(3) It extends to the whole of British India : * * *

(4) But a certificate shall not be granted thereunder with respect to any debt or security to which a right can be established by probate or letters of administration under the 'Indian Succession Act, 1865, or by probate of a will to which the 'Hindu Wills

¹ For Statement of Objects and Reasons, see Gazette of India, 1888, Pt. V, p. 60 ; for Report of the Select Committee, see *ibid*, 1889, Pt. V, p. 45 ; and for Proceedings in Council, see *ibid*, 1888, Pt. VI, pp. 92 and 93.

1894), s. 3, Ben. Code, Vol. I.

It has been declared in force in the Santhal Parganas by notification under s. 3 of the Santhal Parganas Settlement Regulation (3 of 1872), as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (3 of 1899), Ben. Code, Vol. I.

* The words "inclusive of Upper Burma, except the Shan States" were repealed by the Fifth Schedule to the Burma Laws Act, 1893 (13 of 1893), Bur. Code.

² See the Native Christian Administration of Estates Act, 1901 (7 of 1901), s. 5, Genl. Acts, Vol. V.

³ Genl. Acts, Vol. I.

⁴ Genl. Acts, Vol. II.

Wills Act, 1870, applies, or by letters of administration with a copy of such a will annexed. XXI of 18

Repeal.

2. (1) The enactments specified in the first schedule are repealed to the extent mentioned in the third column thereof.

(2) But nothing in this Act shall affect any certificate granted before the commencement of this Act under ¹Act XXVII of 1860, or any enactment repealed by that Act.

(3) Any enactment except this Act and section 152 of the ²Probate and Administration Act, 1881, or any document referring to any enactment repealed by this Act shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof. V of 1881.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(1) “ District Court,” subject to the other provisions of this Act and to the provisions of proviso (b) to section 23 of the ³Punjab Courts Act, 1884, and of any other like enactment for the time being in force, means a Court presided over by a District Judge: and XVIII of 1884.

(2) “ security ” means—

- (a) any promissory note, debenture stock or other security of the Government of India ;
- (b) any bond, debenture or annuity charged by the Imperial Parliament on the revenues of India ;
- (c) any stock or debenture of, or share in, a company or other incorporated institution ;
- (d) any debenture or other security for money issued by, or on behalf of, a local authority ;
- (e) any other security which the Governor General in Council may, by notification in the Gazette

¹ Repealed by this Act.

² Genl. Acts, Vol. III.

³ Panj. and N.-W. Code.

Gazette of India, declare to be a security for the purposes of this Act.

4. (1) No Court shall—

- (a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming to be entitled to the effects of the deceased person or to any part thereof, or
- (b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt,

Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons.

except on the production, by the person so claiming, of—

- (i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or
- (ii) a certificate granted under section 36 or section 37 of the¹ Administrator-General's Act, 1874, and having the debt mentioned therein, or
- (iii) a certificate granted under this Act and having the debt specified therein, or
- (iv) a certificate granted under² Act XXVII of 1860 or an enactment repealed by that Act, or
- (v) a certificate granted under the Regulation of the Bombay Code³ No. VIII of 1827 and, if granted after the commencement of this Act, having the debt specified therein.

(2) The word "debt" in sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.

5. The District Court within the jurisdiction of which the deceased ordinarily resided at the time of his death shall have jurisdiction to grant a succession certificate.

Court having jurisdiction

his

¹ Gen. Act, Vol. II.

² Repealed by this Act.

³ Relating to the Administration of Estates, see Bom. Code, Vol. I.

to grant
certificate.

his death, or if at that time he had no fixed place of residence then within the jurisdiction of which any part of the property of the deceased may be found, may grant a certificate under this Act.

Application
for certi-
ficate.

6. (1) Application for such a certificate must be made to the District Court by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the ¹ Code of Civil Procedure for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely :—

XIV of

- (a) the time of the death of the deceased ;
- (b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Court to which the application is made, then the property of the deceased within those limits ;
- (c) the family or other near relatives of the deceased and their respective residences ;
- (d) the right in which the petitioner claims ;
- (e) the absence of any impediment under section 1, sub-section (4), or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted ; and
- (f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

7. (1) If the District Court is satisfied that there is ground for entertaining the application, it shall fix

a

Procedure on
application.

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1906). Genl. Acts, Vol. VI.

a day for the hearing thereof and cause ¹ notice of the application and of the day fixed for the hearing—

(a) to be served on any person to whom, in the opinion of the Court, special notice of the application should be given, and

(b) to be posted on some conspicuous part of the Court-house and published in such other manner, if any, as the Court, subject to any rules made by the High Court in this behalf, thinks fit,

and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

(2) When the Court decides the right thereto to belong to the applicant, it shall make an order for the grant of the certificate to him.

(3) If the Court cannot decide the right to the certificate without determining questions of law or fact which seem to it to be too intricate and difficult for determination in a summary proceeding, it may nevertheless grant a certificate to the applicant if he appears to be the person having *prima facie* the best title thereto.

(4) When there are more applicants than one for a certificate, and it appears to the Court that more than one of such applicants are interested in the estate of the deceased, the Court may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects, of the applicants.

8. When the District Court grants a certificate, it shall therein specify the debts and securities set forth in the application for the certificate, and may thereby empower the person to whom the certificate is granted—

Contents of certificate.

(a) to receive interest or dividends on, or

(b) to

¹ For form of notice in—

Bombay, see Bom. Govt. Gazette, 1890, Pt. I, p. 336;

United Provinces of Agra and Oudh, see U. P. R. and O.

(Sections 9-10.)

(b) to negotiate or transfer, or

(c) both to receive interest or dividends on, and to negotiate or transfer,

the securities or any of them.

Requisition
of security
from grantee
of certificate.

9. (1) The District Court shall in any case in which it proposes to proceed under section 7, sub-section (3) or sub-section (4), and may, in any other case, require, as a condition precedent to the granting of a certificate, that the person to whom it proposes to make the grant shall give to the Judge of the Court, to enure for the benefit of the Judge for the time being, a bond with one or more surety or sureties, or other sufficient security, for rendering an account of debts and securities received by him and for indemnity of persons who may be entitled to the whole or any part of those debts and securities.

(2) The Court may, on application made by petition and on cause shown to its satisfaction, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court thinks fit, assign the bond or other security to some proper person, and that person shall thereupon be entitled to sue thereon in his own name as if it had been originally given to him instead of to the Judge of the Court, and to recover, as trustee for all persons interested, such amount as may be recoverable thereunder.

Extension of
certificate.

10. (1) A District Court may from time to time, on the application of the holder of a certificate under this Act, extend the certificate to any debt or security not originally specified therein, and every such extension shall have the same effect as if the debt or security to which the certificate is extended had been originally specified therein.

(2) Upon the extension of a certificate, powers with respect to the receiving of interest or dividends on, or the negotiation or transfer of, any security to which the certificate has been extended may be conferred, and a bond or further bond or other security for

for the purposes mentioned in the last foregoing section may be required, in the same manner as upon the original grant of a certificate.

11. Certificates shall be granted and extensions of certificates shall be made, as nearly as circumstances admit, in the forms set forth in the second schedule.

Forms of certificate and extended certificate.

12. Where a District Court has not conferred on the holder of a certificate any power with respect to a security specified in the certificate, or has only empowered him to receive interest or dividends on, or to negotiate or transfer, the security, the Court may, on application made by petition and on cause shown to its satisfaction, amend the certificate by conferring any of the powers mentioned in section 8, or by substituting any one for any other of those powers.

Amendment of certificate in respect of powers as to securities.

of 1870. 13. (1) For articles 11 and 12 of the first schedule to the Court-fees Act, 1870, the following shall be substituted, namely:—

Amendment of Act VII, 1870.

Number.		Proper fee
"11. Probate of a will or letters of administration with or without will annexed	If the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees.	Two per centum on such amount or value: provided that when after the grant of a certificate under the Succession Certificate Act, 1889, or any enactment repealed by that Act, or under the Regulation of the Bombay Code, No. VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant, shall be reduced by the amount of the fee paid in respect of the former grant.

"12. Certificate

¹ Section 13 in so far as it substituted Arts. 11 and 12A in the Court-fees Act, 1870, S.B. I, is now rendered obsolete by the Court-fees (Amendment) Act, 1910 (7 of 1910), s. 2 (i), which has substituted new Arts. 11 and 12A.

- 2 Gen. Acts, Vol II.

Succession Certificate.

[ACT VII

(Section 13.)

Number.		Proper fee.
"12. Certificate under the Succession Certificate Act, 1889.	In any case . . .	Two per centum on the amount or value of any debt or security specified in the certificate under section 8 of the Act, and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.
		NOTE.—(1) The amount of a debt is its amount, including interest, on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained.
		(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act, and, where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of, the security or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.
"12A. Certificate under the Regulation of the Bombay Code, No. VIII of 1827.	...	(1) "As regards debts and securities, the same fee as would be payable in respect of a certificate under the Succession Certificate Act, 1889, or in respect of an extension of such a certificate, as the case may be, and (2) as regards other property in respect of which the certificate is granted, two per centum on so much of the amount or value of such property as exceeds one thousand rupees."

* See 1st footnote on p. 9.

(2) In

1870.

(2) In the 'Court-fees Act, 1870, section 19, clause viii, for the words and figures "and certificate mentioned in the first schedule to this Act annexed, No. 12," the words and figures "and, save as regards debts and securities, a certificate under 'Bombay Regulation VIII of 1827'" shall be substituted.

1870.

14. (1) Every application for a certificate or for the extension of a certificate must be accompanied by a deposit of a sum equal to the fee payable under the first schedule to the 'Court-fees Act, 1870, in respect of the certificate or extension applied for.

Mode of
collecting
court-fees on
certificates.

(2) If the application is allowed, the sum deposited by the applicant shall be expended, under the direction of the Court, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.

(3) Any sum received under sub-section (1) and not expended under sub-section (2) shall be refunded to the person who deposited it.

15. A certificate under this Act shall have effect throughout the whole of British India.

Local extent
of certificate.

16. Subject to the provisions of this Act, the certificate of the District Court shall, with respect to the debts and securities specified therein, be conclusive as

Effect of
certificate.

...able on such ... contraven-
ther defect,
afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted.

17. Where a certificate in the form, as nearly as circumstances admit, of the second schedule has been granted to a resident within a Foreign State by the British representative accredited to the State, or where a certificate so granted has been extended in such form by such representative, the certificate shall, when

Effect of
certificate
granted or
extended by
Brit'ish
representa-
tive in
Foreign
State.

¹ Genl. Acts, Vol. II.

² Rom. Code, Vol. I.

(Sections 18-19.)

when stamped in accordance with the provisions of the Court-fees Act, 1870, with respect to certificates under this Act, have the same effect in British India as a certificate granted or extended under this Act. VII.

Revocation
of certificate.

18. A certificate granted under this Act may be revoked for any of the following causes, namely :

- (a) that the proceedings to obtain the certificate were defective in substance ;
- (b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case ;
- (c) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently ;
- (d) that the certificate has become useless and inoperative through circumstances ;
- (e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

Appeal.

19. (1) Subject to the other provisions of this Act, an appeal shall lie to the High Court from an order of a District Court granting, refusing or revoking a certificate under this Act, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District Court, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted.

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure.

(3) Subject

¹ Genl. Acts, Vol. II.

² See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Genl. Acts, Vol. VI

(3) Subject to the provisions of sub-section (1) and of Chapters XLVI and XLVII of the ¹Code of Civil Procedure as applied by section 647 of that Code, an order of a District Court under this Act shall be final.

20. Save as provided by this Act, a certificate granted thereunder in respect of any of the effects of a deceased person shall be invalid if there has been a previous grant of such a certificate or of probate or letters of administration in respect of the estate of the deceased person and if such previous grant is in force.

Effect on certificate of previous certificate, probate or letters of administration.

21. (1) A grant of probate or letters of administration under the ²Probate and Administration Act, 1881, in respect of an estate shall be deemed to supersede any certificate previously granted under this Act in respect of any debts or securities included in the estate.

Effect on certificate of subsequent probate or letters of administration.

(2) When at the time of the grant of the probate or letters any suit or other proceeding instituted by the holder of the certificate regarding any such debt or security is pending, the person to whom the grant is made shall, on applying to the Court in which the suit or proceeding is pending, be entitled to take the place of the holder of the certificate in the suit or proceeding.

22. Where a certificate under this Act has been superseded or is invalid by reason of the certificate having been revoked under section 18, or by reason of the grant of a certificate to a person named in an appellate order under section 19, or by reason of a certificate having been previously granted, or by reason of a grant of probate or letters of administration, or for any other cause, all payments made, or dealings had, as regards debts and securities specified in the superseded or invalid certificate, to or with the holder of that certificate in ignorance of its supersession or invalidity, shall be held good against claims under any

Validation of certain payments made in good faith to holder of invalid certificate.

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Genl. Acts, Vol. VI.

² Genl. Acts, Vol. III.

(Sections 23-24.)

any other certificate or under the probate or letters of administration.

Prohibition
of exercise of
certain
powers by
curators.

23. (1) Where a certificate has been granted under this Act or ¹Act XXVII of 1860, or a grant of probate or letters of administration has been made, a curator appointed under ²Act XIX of 1841 shall not exercise any authority lawfully belonging to the holder of the certificate or to the executor or administrator.

(2) But persons who have paid debts or rents to a curator authorised by a Court to receive them shall be indemnified, and the curator shall be responsible for the payment thereof to the person who has obtained the certificate, probate or letters of administration, as the case may be.

Effect of cer-
tain probates
and letters.

24. Any probate or letters of administration granted before the first day of April, 1881, by any Supreme or High Court of Judicature, or by the Court of a Recorder in Burma, in any case in which the deceased person was not a British subject within the meaning of that expression as used in the charters of the Supreme Courts of Judicature, and in which any assets belonging to him were at the time of his death within the local limits of the jurisdiction of the Court, shall, for the purpose of the recovery of debts, the protection of persons paying debts, and the negotiation or transfer of securities included in the estate of the deceased, be deemed to have and to have had the effect which a grant of probate or letters of administration has under the ³Indian Succession Act, 1865: X of I

Provided that nothing in this section shall be construed to validate any disposal of property by an executor or administrator which has before the commencement of this Act been declared by any competent Court to be invalid.

25. No

¹ Repealed by this Act.

² The Succession (Property Protection) Act, 1841, Genl. Acts, Vol. I.

³ Genl. Acts, Vol. I.

(Sections 25-26.)

25. No decision under this Act upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this Act shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto.

Effect of decisions under this Act, and liability of holder of certificate thereunder.

26. (1) The Local Government may, by notification in the official Gazette, invest any Court inferior in grade to a District Court with the functions of a District Court under this Act, and may cancel or vary any such notification.

Investiture of inferior Courts with jurisdiction of District Court for purposes of this Act.

(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court in the exercise of all the powers conferred by this Act upon the District Court, and the provisions of this Act relating to the District Court shall apply to such an inferior Court as if it were a District Court :

Provided that an appeal from any such order of an inferior Court as is mentioned in sub-section (1) of section 19 shall lie to the District Court, and not to the High Court, and that the District Court may, if it thinks fit, by its order on the appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Court.

(3) An order of a District Court on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions of

Chapters

¹ For the list of Courts invested with the functions of a District Court, see the following:

Ben. Local Stat. R. and O., Vol. II.
 (6) Madras, see Mad. List of Local R. and O., Vol. I.
 (7) United Provinces of Agra and Oudh, see U. P. List of Local R. and O., Vol. I.

(Sections 27-28.)

Chapters XLVI and XLVII of the ¹Code of Civil Procedure as applied by section 647 of that Code, be final.

(4) The District Court may withdraw any proceedings under this Act from an inferior Court and may either itself dispose of them or transfer them to another such Court established within the local limits of the jurisdiction of the District Court and having authority to dispose of the proceedings.

(5) A notification under sub-section (1) may specify any inferior Court specially or any class of such Courts in any local area.

(6) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Court shall for the purposes of this section be deemed to be a Court inferior in grade to a District Court.

Surrender of
superseded
and invalid
certificates.

27. (1) When a certificate under this Act has been superseded or is invalid from any of the causes mentioned in section 22, the holder thereof shall, on the requisition of the Court which granted it, deliver it up to that Court.

(2) If he wilfully and without reasonable cause omits so to deliver it up, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to three months, or with both.

Provisions
with respect
to certificates
under Bom-
bay Regula-
tion VIII of
1827.

28. ² Notwithstanding anything in the Regulation of the Bombay Code ³No. VIII of 1827, the provisions of section 3, section 6, sub-section (1), clause (f), and sections 8, 9, 10, 11, 12, 14, 16, 18, 19, 25, 26 and 27 of this Act with respect to certificates under this Act and applications therefor, and of section 98 of the ⁴Probate and Administration Act, 1881, with respect to the exhibition of inventories and accounts by executors and administrators, shall, so far as they can be made

¹ See now Act 5 of 1909, Genl. Acts, Vol. VI.

² For notification issued under this section in conjunction with s. 22, see Bom. Local R. and O., Vol. I.

³ Bom. Code, Vol. I.

⁴ Genl. Acts, Vol. III.

1880.]

Succession Certificate.

(The First Schedule.—Enactments repealed)

made applicable, apply, respectively, to certificates granted under that Regulation, and applications made for certificates thereunder, after the commencement of this Act, and to the exhibition of inventories and accounts by the holders of such certificates so granted.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED

Section 2.

Enactment	Enactment	Extent of repeal
<i>Acts of the Governor General in Council.</i>		
XXVII of 1860	Collection of Debts on successions.	So much as has not been repealed.
XIV of 1869	Bombay Civil Courts Act, 1869.	In section 16, from and inclusive of the words and figures "Bombay Regulation VIII of 1827" down to and inclusive of the words "representatives of deceased persons and".
XV of 1874	Laws Local Extent Act, 1874.	So much as relates to Act XVII of 1860.
XIII of 1879	Oudh Civil Courts Act, 1879.	Section 23, clause (3), relating to applications for certificates under Act XXVII of 1860.
V of 1881	Probate and Administration Act, 1881.	Sections 151 and 153.
XVIII of 1881	Punjab Courts Act, 1881	Section 29, sub-section (1), clause (a).
XII of 1887	Bengal, North-Western Provinces and Assam Civil Courts Act, 1887.	Section 23, sub-section (2), clause (c).

1 Bom. Code, Vol. I.
2 Genl. Acts, Vol. II.
3 U. P. Code, Vol. I.
4 Genl. Acts, Vol. III.
5 Punjab and N.-W. Code
6 E. B. & A. Code, Vol. I.

Succession Certificate.

[ACT VII

(The First Schedule—Enactments repealed. The Second Schedule.—Forms of Certificate and Extended Certificate.)

THE FIRST SCHEDULE—concluded.

Number and year.	Subject or title.	Extent of repeal.
<i>Act of the Lieutenant-Governor of Bengal in Council.</i>		
VII of 1880	Public Demands Recovery Act, 1880.	In section 7, clause (3), the words "and the note to paragraph 12 of Schedule I."

THE SECOND SCHEDULE.

FORMS OF CERTIFICATE AND EXTENDED CERTIFICATE.

(See section 11.)

In the Court of

To A. B.

Whereas you applied on the day of
for a certificate under the Succession Certificate Act, 1889, in
respect of the following debts and securities, namely :—

Debts.

Serial number.	Name of debtor.	Amount of debt, including interest, on date of application for certificate.	Description and date of instrument, if any, by which the debt is secured.

Securities.

Serial number.	Description.			Market-value of security on date of application for certificate.
	Distinguishing number or letter of security.	Name, title or class of security.	Amount or par value of security.	

This

¹ Place entirely repealed by the Public Demands Recovery Act, 1895 (Ben. Act 1 of 1895), Ben. Code, Vol. IV.

(The Second Schedule.—Forms of Certificate and Extended Certificate.)

This certificate is accordingly granted to you and empowers you to collect those debts [and] [to receive] [interest] [dividends] [on] [to negotiate] [to transfer] [those securities].

Dated this

day of

District Judge.

In the Court of

On the application of *A. B* made to me on the day of
, I hereby extend this certificate to the following
debts and securities, namely:—

Debts.

Serial number.	Name of debtor	Amount of debt, including interest, on date of application for extension.	Description and date of instrument, if any, by which the debt is secured.

Securities.

Serial number	DESCRIPTION.			Market-value of security on date of application for extension
	Distinguishing number or letter of security.	Name, title or class of security	Amount or par value of security.	

This extension empowers *A. B.* to collect those debts [and] [to receive] [interest] [dividends] [on] [to negotiate] [to transfer] [those securities].

Dated this

day of

District Judge.

CALCUTTA
SUPERINTENDENT GOVERNMENT PRINTING, INDIA
8, HASTINGS STREET

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

THE PROVINCIAL SMALL CAUSE COURTS ACT, 1887
(ACT IX OF 1887),

AS MODIFIED UP TO 1ST DECEMBER, 1900.

CALCUTTA :
OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA.
1907.

CALCUTTA ·
GOVERNMENT CENTRAL PRINTING OFFICE,
8, HASTINGS STREET.

STATEMENT OF REPEALS AND AMENDMENTS.

S. 2, REP. IN PART BY	Act XII of 1891, First Schedule.
S. 17 (1), REP. IN PART BY	Act XII of 1891, First Schedule.
S. 26, REP. BY	Act X of 1888, s. 4.
THE FIRST SCHEDULE REP. BY	Act XII of 1891, First Schedule.

The following changes have been made in reprinting the Act :—

- (1) repealed matter has been omitted, explanatory foot-notes being inserted :
- (2) amendments have been inserted in their proper places, with explanatory foot-notes :
- (3) some further foot-notes have been added for convenience of reference : and
- (4) the number and year of Acts referred to in the text have been noted in the outer margin, except where both appear in the text.

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28. Subordination of Courts of Small Causes.
29. Seal.
30. Abolition of Courts of Small Causes.
31. Saving of power to appoint Judge of Court of Small Causes to other office.
32. Application of Act to Courts invested with jurisdiction of Court of Small Causes.
33. Application of Act and Code to Court so invested as to two Courts.
34. " " " " " "
35. " " " " " "
36. " " " " " "
37. Publication of certain orders.

THE FIRST SCHEDULE.—[REPEALED.]

THE SECOND SCHEDULE.—SUITS EXCEPTED FROM THE COGNIZANCE OF A COURT OF SMALL CAUSES.

ACT No. IX OF 1887.

[24th February, 1887.]

An Act to consolidate and amend the law relating to Courts of Small Causes established beyond the Presidency-towns.

[As modified up to 1st December, 1900.]

WHEREAS it is expedient to consolidate and amend the law relating to Courts of Small Causes established beyond the local limits for the time being of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William in Bengal and at

¹ For Statement of Objects and Reasons, see *Gazette of India*, 1886, Pt. V, p. 8; for Report of the Select Committee, see *ibid*, 1887, Pt. IV, p. 33; for Proceedings in Council, see *ibid*, 1886, Supplement, pp. 8 and 9, and *ibid*, 1887, Pt. VI, p. 25.

Act 9 of 1887 was declared in force in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (1 of 1890), s. 3, see Baluchistan Code, Ed. 1900, p. 60.

2 s. p. 60--

The District of Lohardaga included at this time the District of Palaman, which was separated in 1891. It is now called the Ranchi District—see *Calcutta Gazette*, 1899, Pt. I, p. 41.

The Act has been declared in force in Upper Burma (except the Shan States) by the First

883, Pt. I,

(b) to the whole of Upper Burma (except the Shan States)—see

Provincial Small Cause Courts. [ACT IX
(Chapter I.—Preliminary.—Sections 1-3.)

at Madras and Bombay; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Title, extent
and com-
mencement.

1. (1) This Act may be called the Provincial Small Cause Courts Act, 1887.

(2) It extends to the whole of British India¹; and

(3) It shall come into force on the first day of July, 1887.

2.* * * * *

(2)* All Courts constituted, limits fixed, places appointed, appointments, declarations and rules made, jurisdiction and powers conferred, forms prescribed, directions given and notifications published under Act No. XI of 1865² (*an Act to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*), or under any enactment repealed by that Act, shall, so far as may be, be deemed to have been respectively constituted, fixed, appointed, made, conferred, prescribed, given and published under this Act.

(3) Any enactment or document referring to Act No. XI of 1865³ or to any enactment thereby repealed shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

3. Nothing in this Act shall be construed to affect—

(a) any proceedings before or after decree in any suit instituted before the commencement of this Act; or

(b) the

¹ As to definition of British India, see the Interpretation Act, c. 63, s. 18, cl. 4—*Gazette of India*, 1889. Pt. I, General Clauses Act, 1897 (10 of 1897), s. 3 (7), *Gen. Cl. Act*, Vol. VI, p. 216.

² Sub-s. (1) of this section and the word "Act" and of sub-s. (2) were repealed by the Repealing and Amending Act of 1931, General Acts, Vol. I, p. 1.

³ Act 11 of 1865 was repealed by Act 11 of 1887.

(Chapter I.—Preliminary.—Section 4. Chapter II.—*Constitution of Courts of Small Causes.*—Section 5.)

(b) the jurisdiction of a Magistrate under any law for the time being in force with respect to debts or other claims of a civil nature, or of Village Munsifs or Village Panchayats under the provisions of the Madras Code, or of Village Munsifs under the Dekkhan Agriculturists' Relief Act, 1879¹; or

(c) any local law or any special law other than the Code of Civil Procedure.²

4. In this Act, unless there is something repugnant in the subject or context, "Court of Small Causes" means a Court of Small Causes constituted under this Act, and includes any person exercising jurisdiction under this Act in any such Court.

Definition.

CHAPTER II.

CONSTITUTION OF COURTS OF SMALL CAUSES.

5. (1) The Local Government, with the previous sanction of the Governor General in Council, may, by order in writing, establish a Court of Small Causes at any place within the territories under its administration beyond the local limits for the time being of the ordinary original civil jurisdiction of a High Court of Judicature established in a Presidency-town.³

Establishment of Courts of Small Causes

(2) The local limits of the jurisdiction of the Court of Small Causes shall be such as the Local Government may define, and the Court may be held at such place

¹ See the revised edition, as modified up to 1st June, 1905, published by the Government of Bombay.

(b) *Lorma*, see *Burma Rules Manual*, L.S. 1905, Vol. I, pp. 55 and 58;

(c) United Provinces of Agra and Oudh, see *United Provinces Local Rules and Orders*, Ed. 1905, Pt. I, Vol. I, pp. 129 and 130;

(d) North-West Frontier Province (Cantonment of Nowshera), see *Gazette of India*, 1904, Pt. I, p. 318.

Provincial Small Cause Courts. [ACT IX
(Chapter I.—Preliminary.—Sections 1-3.)

at Madras and Bombay; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Title, extent
and com-
mencement.

1. (1) This Act may be called the Provincial Small Cause Courts Act, 1887.

(2) It extends to the whole of British India¹; and

(3) It shall come into force on the first day of July, 1887.

2.² . * * * *

(2)* All Courts constituted, limits fixed, places appointed, appointments, declarations and rules made, jurisdiction and powers conferred, forms prescribed, directions given and notifications published under Act No. XI of 1865³ (*an Act to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*), or under any enactment repealed by that Act, shall, so far as may be, be deemed to have been respectively constituted, fixed, appointed, made, conferred, prescribed, given and published under this Act.

(3) Any enactment or document referring to Act No. XI of 1865³ or to any enactment thereby repealed shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

Savings.

3. Nothing in this Act shall be construed to affect—

(a) any proceedings before or after decree in any suit instituted before the commencement of this Act; or

(b) the

¹ As to definition of British India, see the Interpretation Act (62 & 63 Viet., c. 63), s. 18, cl. 4—*Gazette of India*, 1889, Pt. I, p. 545, and the General Clauses Act, 1897 (10 of 1897), s. 3 (7). General Acts, Ed. 1879, Vol. VI, p. 316.

² Sub-s. (1) of this section and the word "But" at the commencement of sub-s. (2) were repealed by the Repealing and Amending Act, 1891 (12 of 1891), General Acts, Vol. VI.

³ Act 11 of 1865 was repealed by s. 2 (1) of this Act.

(Chapter I.—Preliminary.—Section 4. Chapter II.
—Constitution of Courts of Small Causes.—
Section 5.)

(b) the jurisdiction of a Magistrate under any law for the time being in force with respect to debts or other claims of a civil nature, or of Village Munsifs or Village Panchayats under the provisions of the Madras Code, or of Village Munsifs under the Dekkhan Agriculturists' Relief Act, 1879¹; or

(c) any local law or any special law other than the Code of Civil Procedure.²

4. In this Act, unless there is something repugnant in the subject or context, "Court of Small Causes" means a Court of Small Causes constituted under this Act, and includes any person exercising jurisdiction under this Act in any such Court.

CHAPTER II.

CONSTITUTION OF COURTS OF SMALL CAUSES.

5. (1) The Local Government, with the previous sanction of the Governor General in Council, may, by order in writing, establish a Court of Small Causes at any place within the territories under its administration beyond the local limits for the time being of the ordinary original civil jurisdiction of a High Court of Judicature established in a Presidency-town.³

(2) The local limits of the jurisdiction of the Court of Small Causes shall be such as the Local Government may define, and the Court may be held at such place

¹ See the revised edition, as modified up to 1st June, 1905, published by the Government of Bombay.

² See the revised edition, as modified up to 1st June, 1905, published by the Government of Bombay.

³ See the revised edition, as modified up to 1st June, 1905, published by the Government of Bombay.

(b) Terms, see *Muzim's Manual*, Ed. 1905, vol. I, pp. 55 and 56;

(c) United Provinces of Agra and Oudh, see *United Provinces Local Rules and Orders*, Ed. 1905, Pt. I, Vol. I, pp. 129 and 130;

(d) North-West Frontier Province (Cantonment of Nowshera), see *Gazette of India*, 1904, Pt. I, p. 318.

(Chapter II.—Constitution of Courts of Small Causes.—Sections 6-8.)

place or places within those limits as the Local Government may appoint.¹

Judge.

6. (1) When a Court of Small Causes has been established, the Local Government shall, by order in writing, appoint a Judge of the Court.²

(2) The Judge may be the Judge of one Court of Small Causes or of two or more such Courts, as the Local Government directs.

Appointment of times of sitting in certain circumstances.

7. (1) A Judge who is the Judge of two or more such Courts may, with the sanction of the District Court, fix the times at which he will sit in each of the Courts of which he is Judge.

(2) Notice of the times shall be published in such manner as the High Court from time to time directs.

Additional Judge.

8. (1) The Local Government, with the previous sanction of the Governor General in Council, may, by order in writing, appoint an Additional Judge of a Court of Small Causes or of two or more such Courts.

(2) The Additional Judge shall discharge such of the functions of the Judge of the Court or Courts as the Judge may assign to him, and in the discharge of those functions shall exercise the same powers as the Judge.

(3) The Judge may withdraw from the Additional Judge any business pending before him.

(4) When the Judge is absent, the Additional Judge may discharge all or any of the functions of the Judge.

9. A Judge

Ed.
and

(c) Central Provinces, see Central Provinces Local Rules and Orders, Ed. 1901, Pt. II, p. 71

(d) United Provinces of Agra and Oudh, see United Provinces Local Rules and Orders, Ed. 1905, Pt. I, Vol. I, pp. 129 and 130.

² For instance of a notification issued under this section, see Norms Rules Manual, Ed. 1903, p. 55.

(Chapter II.—*Constitution of Courts of Small Causes.*—Sections 9-12.)

9. A Judge or Additional Judge of a Court of Small Causes may be suspended or removed from office by the Local Government. Suspension and removal of Judges.

10. The Local Government, after consultation with the High Court, may, by order in writing, direct that two Judges of Courts of Small Causes, or a Judge and an Additional Judge of a Court of Small Causes, shall sit together for the trial of such class or classes of suits or applications cognizable by a Court of Small Causes as may be described in the order. Power to require two Judges to sit at a bench.

11. (1) If two Judges, or a Judge and an Additional Judge, sitting together under the last foregoing section, differ as to a question of law or usage having the force of law, or in construing a document the construction of which may affect the merits, they shall draw up and refer, for the decision of the High Court, a statement of the facts of the case and of the point on which they differ in opinion, and the provisions of Chapter XLVI of the Code of Civil Procedure¹ shall apply to the reference. Decision in case heard by a bench.

of 1882.

(2) If they differ on any matter other than a matter specified in sub-section (1), the opinion of the Judge who is senior in respect of date of appointment as Judge of a Court of Small Causes, or, if one of them is an Additional Judge, then the opinion of the Judge sitting with him, shall prevail.

(3) For the purposes of sub-section (2), a Judge permanently appointed shall be deemed to be senior to an officiating Judge.

12. (1) The Local Government may appoint to a Court of Small Causes an officer to be called the Registrar of the Court.² Registrar.

(2) Where a Registrar is appointed, he shall be the chief ministerial officer of the Court.

(3) The

Provincial Small Cause Courts. [ACT IX
(Chapter II.—Constitution of Courts of Small
Causes.—Sections 13-14.)

(3) The Local Government may, by order in writing, confer upon a Registrar, within the local limits of the jurisdiction of the Court, the jurisdiction of a Judge of a Court of Small Causes for the trial of suits of which the value does not exceed twenty rupees.

(4) The Registrar shall try such suits cognizable by him as the Judge may, by general or special order, direct.

(5) A Registrar may be suspended or removed from office by the Local Government.

Other ministerial officers.

13. Subject to any enactment for the time being in force and to any orders made by the Local Government in this behalf, the law or practice for the time being applicable to the appointment, punishment and transfer of ministerial officers of a Civil Court of the lowest grade competent to try an original suit of the value of five thousand rupees in that portion of the territories administered by the Local Government in which a Court of Small Causes is established shall, so far as it can be made applicable, apply to the appointment, punishment and transfer of ministerial officers of the Court of Small Causes other than the Registrar, if any, of that Court.

Duties of ministerial officers.

14. (1) The ministerial officers of a Court of Small Causes shall, in addition to any duties mentioned in this Act, or in any other enactment for the time being in force, as duties which are or may be imposed on any of them, discharge such duties of a ministerial nature as the Judge directs.

(2) The High Court may make rules consistent with this Act, and with any other enactment for the time being in force, conferring and imposing on the ministerial officers¹ of a Court of Small Causes such powers and duties as it thinks fit, and regulating the mode

¹ For instance of a notification issued under this power, see Bombay Local Rules and Orders, Ed. 1876, Vol. I, p. 423.

Provincial Small Cause Courts.



—Jurisdiction of Courts of Small Causes 15-16. Chapter IV.—Practice and Procedure.—Section 17.)

Local powers and duties so conferred and imposed are to be exercised and performed.

CHAPTER III.

JURISDICTION OF COURTS OF SMALL CAUSES.

15. (1) A Court of Small Causes shall not take cognizance of the suits specified in the second schedule as suits excepted from the cognizance of a Court of Small Causes. Cognizance of suits by Courts of Small Causes.

(2) Subject to the exceptions specified in that Schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes.

(3) Subject as aforesaid, the Local Government may, by order in writing, direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes mentioned in the order.¹

16. Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable. Exclusive jurisdiction of Courts of Small Causes.

CHAPTER IV.

PRACTICE AND PROCEDURE.

17. (1) The procedure prescribed in the chapters and sections of the Code of Civil Procedure² specified in the second schedule. Application of the Code of Civil Procedure.

¹ For notifications issued under this power in—

(a) Bombay, see *Bombay Local Rules and Orders*, Ed. 1936, Vol. I, p. 493;

(b) Burma, see *Burma Rules Manual*, Ed. 1903, Vol. I, pp. 55 and 56.

² See the revised edition, as modified up to 1st December, 1922.

(Chapter IV.—Practice and Procedure.—Sections 18-19.)

in the second schedule to that Code, * * * * * shall, so far as those chapters and sections are applicable, be the procedure followed in a Court of Small Causes in all suits cognizable by it and in all proceedings arising out of such suits :

Provided that an applicant for an order to set aside a decree passed *ex parte* or for a review of judgment shall, at the time of presenting his application, either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give security to the satisfaction of the Court for the performance of the decree or compliance with the judgment, as the Court may direct.

(2) Where a person has become liable as surety under the proviso to sub-section (1), the security may be realized in manner provided by section 253 of the Code of Civil Procedure.²

XIV of

Trial of
suits by
Registrar.

18. (1) Suits cognizable by the Registrar under section 12, sub-sections (3) and (4), shall be tried by him, and decrees passed therein shall be executed by him, in like manner in all respects as the Judge might try the suits, and execute the decrees, respectively.

(2) The Judge may transfer to his own file, or to that of the Additional Judge if any Additional Judge has been appointed, any suit or other proceeding pending on the file of the Registrar.

Admission,
return and
rejection of
plaints by
Registrar.

19. (1) When the Judge of a Court of Small Causes is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may admit a plaint, or return or reject a plaint for any reason for which the Judge might return or reject it.

(2) The Judge may, of his own motion or on the application of a party, return or reject a plaint which has

¹ The words, "as amended by this Act" were repealed by the Repealing and Amending Act, 1901 (12 of 1901), see the revised edition with the schedules as modified up to 31st May, 1902.

² See the revised edition, as modified up to 1st December, 1902.

has been admitted by the Registrar, or admit a plaint which has been returned or rejected by him :

Provided that, where a party applies for the return or rejection or the admission of a plaint under this sub-section, and his application is not made at the first sitting of the Judge after the day on which the Registrar admitted, or returned or rejected, the plaint, the Judge shall dismiss the application unless the applicant satisfies him that there was sufficient cause for not making the application at that sitting.

20. (1) If, before the date appointed for the hearing of a suit, the defendant or his agent duly authorised in that behalf appears before the Registrar and admits the plaintiff's claim, the Registrar may, if the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, pass against the defendant, upon the admission, a decree which shall have the same effect as a decree passed by the Judge.

Passing of decrees by Registrar on confession.

(2) Where a decree has been passed by the Registrar under sub-section (1), the Judge may grant an application for review of judgment, and re-hear the suit, on the same conditions, on the same grounds and in the same manner as if the decree had been passed by himself.

21. (1) If the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may, subject to any instructions which he may have received from the Judge or, with respect to decrees or orders made by an Additional Judge, from the Additional Judge, make any orders in respect of applications for the execution of decrees and orders made by the Court of which he is Registrar, or sent to that Court for execution, which the Judge might make under this Act.

Execution of decrees by Registrar.

(2) The Judge, in the case of any decree or order with respect to the execution of which the Registrar has made an order under sub-section (1), or the

Additional

Additional Judge, in the case of any such decree or order which has been made by himself and with respect to which proceedings have not been taken by the Judge under this sub-section, may of his own motion, or on application made by a party within fifteen days from the date of the order of the Registrar or of the execution of any process issued in pursuance of that order, reverse or modify the order.

(3) The period of fifteen days mentioned in sub-section (2) shall be computed in accordance with the provisions of the Indian Limitation Act, 1877,¹ as though the application of the party were an application for review of judgment. XV of 1877

Adjournment
of cases by
chief ministerial officer.

22. When the Judge of a Court of Small Causes is absent and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar or other chief ministerial officer of the Court may exercise from time to time the power which the Court possesses of adjourning the hearing of any suit or other proceeding, and fix a day for the further hearing thereof.

Return of
plaints in
suits involving
questions
of title.

23. (1) Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depend upon the proof or disproof of a title to immoveable property or other title which such a Court may at any time determine, the Court may at any time direct the plaintiff to file a statement of the title to be determined.

(2) When a Court returns a plaint under sub-section (1), it shall comply with the provisions of the second paragraph of section 57 of the Code of Civil Procedure² and make such order with respect to costs as it deems just, and the Court shall, for the purposes

of

¹ See the revised edition, as modified up to 31st December, 1900.

² See the revised edition, as modified up to 1st December, 1879.

(Chapter IV.—Practice and Procedure.—Sections 24-27. Chapter V.—Supplemental Provisions.—Section 28.)

1877. of the Indian Limitation Act, 1877,¹ be deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction.

1882. 24. Where an order specified in section 588, Appeals from certain orders of Courts of Small Causes. clause (29), of the Code of Civil Procedure² is made by a Court of Small Causes, an appeal therefrom shall lie to the District Court.

25. The High Court, for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small causes was according to law, may call for the case and pass such order with respect thereto as it thinks fit. Revision of decrees and orders of Courts of Small Causes

26. [Amendment of the second schedule to the Code of Civil Procedure.] Rep. s. 4 of Act X of 1883.

27. Save as provided by this Act, a decree or order made under the foregoing provisions of this Act by a Court of Small Causes shall be final. Finality of decrees and orders.

CHAPTER V.

SUPPLEMENTAL PROVISIONS.

28. (1) A Court of Small Causes shall be subject to the administrative control of the District Court and to the superintendence of the High Court, and shall— Subordination of Courts of Small Causes.

(a) keep such registers, books and accounts as the High Court from time to time prescribes, and

(b) comply with such requisitions as may be made by the District Court, the High Court or the Local Government for records, returns and statements in such form and manner as the authority making the requisition directs.

(2) The

¹ See the revised edition, as modified up to 31st December, 1900.

² See the revised edition, as modified up to 1st December, 1899.

Provincial Small Cause Courts. [ACT IX
(Chapter V.—Supplemental Provisions.—Sections
29-32.)

(2) The relation of the District Court to a Court of Small Causes, with respect to administrative control, shall be the same as that of the District Court to a Civil Court of the lowest grade competent to try an original suit of the value of five thousand rupees in that portion of the territories administered by the Local Government in which the Court of Small Causes is established.

Seal. 29. A Court of Small Causes shall use a seal of such form and dimensions as are prescribed by the Local Government.

Abolition of Courts of Small Causes. 30. The Local Government may, by order in writing, abolish a Court of Small Causes.

Saying of power to appoint Judge of Court of Small Causes to other office. 31. (1) Nothing in this Act shall be construed to prevent the Local Government from appointing a person who is a Judge or Additional Judge of a Court of Small Causes to be also a Judge of any other Civil Court¹ or to be a Magistrate of any class or to hold any other public office.

(2) When a Judge or Additional Judge is so appointed, the ministerial officers of his Court shall, subject to any rules which the Local Government may make in this behalf, be deemed to be ministerial officers appointed to aid him in the discharge of the duties of the other office.

Application of Act to Courts invested with jurisdiction of Court of Small Causes. 32. (1) So much of Chapters III and IV as relates to—

(a) the nature of the suits cognizable by Courts of Small Causes,

(b) the exclusion of the jurisdiction of other Courts in those suits,

(c) the practice and procedure of Courts of Small Causes,

(d) appeal from certain orders of those Courts and revision of cases decided by them, and

(e) the

¹ For instances of notifications issued under this power, see United Provinces List of Local Rules and Orders, Ed. 1905, Pt. I, Vol. I, p. 131

- (e) the finality of their decrees and orders subject to such appeal and revision as are provided by this Act,

applies to Courts invested by or under any enactment for the time being in force with the jurisdiction of a Court of Small Causes so far as regards the exercise of that jurisdiction by those Courts.

(2) Nothing in sub-section (1) with respect to Courts invested with the jurisdiction of a Court of Small Causes applies to suits instituted or proceedings commenced in those Courts before the date on which they were invested with that jurisdiction.

33. A Court invested with the jurisdiction of a Court of Small Causes, with respect to the exercise of that jurisdiction, and the same Court, with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure,¹ be deemed to be different Courts.

Application of Act and Code to Courts so invested as to two Courts.

7 of 1882.

34. Notwithstanding anything in the last two foregoing sections,—

Modification of Code as so applied.

- (a) when, in exercise of the jurisdiction of a Court of Small Causes, a Court invested with that jurisdiction sends a decree for execution to itself as a Court having jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, or
- (b) when a Court, in the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, sends a decree for execution to itself as a Court invested with the jurisdiction of a Court of Small Causes,—

Y of 1882.

the documents mentioned in section 224 of the Code of Civil Procedure¹ shall not be sent with the decree unless in any case the Court, by order in writing, requires them to be sent.

35. (1) Where

¹ See the revised edition, as modified up to 1st December, 1899.

Provincial Small Cause Courts. [ACT IX
(Chapter V.—Supplemental Provisions.—Sections
29-32.)

(2) The relation of the District Court to a Court of Small Causes, with respect to administrative control, shall be the same as that of the District Court to a Civil Court of the lowest grade competent to try an original suit of the value of five thousand rupees in that portion of the territories administered by the Local Government in which the Court of Small Causes is established.

Seal.

29. A Court of Small Causes shall use a seal of such form and dimensions as are prescribed by the Local Government.

Abolition of
Courts of
Small Causes.
Saving of
power to ap-
point Judge
of Court of
Small Causes
to other
office.

30. The Local Government may, by order in writing, abolish a Court of Small Causes.

31. (1) Nothing in this Act shall be construed to prevent the Local Government from appointing a person who is a Judge or Additional Judge of a Court of Small Causes to be also a Judge of any other Civil Court¹ or to be a Magistrate of any class or to hold any other public office.

(2) When a Judge or Additional Judge is so appointed, the ministerial officers of his Court shall, subject to any rules which the Local Government may make in this behalf, be deemed to be ministerial officers appointed to aid him in the discharge of the duties of the other office.

Application
of Act to
Courts
invested
with juris-
diction of
Court of
Small
Causes.

32. (1) So much of Chapters III and IV as re-
lates to—

- (a) the nature of the suits cognizable by Courts of Small Causes,
- (b) the exclusion of the jurisdiction of other Courts in those suits,
- (c) the practice and procedure of Courts of Small Causes,
- (d) appeal from certain orders of those Courts and revision of cases decided by them, and

(e) the

¹ For instances of notifications issued under this power, see United Provinces List of Local Rules and Orders, Ed. 1905, Pt. I, Vol. I, p. 131

- (e) the finality of their decrees and orders subject to such appeal and revision as are provided by this Act,

applies to Courts invested by or under any enactment for the time being in force with the jurisdiction of a Court of Small Causes so far as regards the exercise of that jurisdiction by those Courts.

(2) Nothing in sub-section (1) with respect to Courts invested with the jurisdiction of a Court of Small Causes applies to suits instituted or proceedings commenced in those Courts before the date on which they were invested with that jurisdiction.

33. A Court invested with the jurisdiction of a Court of Small Causes, with respect to the exercise of that jurisdiction, and the same Court, with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure,¹ be deemed to be different Courts.

Application of Act and Code to Courts so invested as to two Courts.

of 1882.

34. Notwithstanding anything in the last two foregoing sections,—

Modification of Code as so applied.

- (a) when, in exercise of the jurisdiction of a Court of Small Causes, a Court invested with that jurisdiction sends a decree for execution to itself as a Court having jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, or

- (b) when a Court, in the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, sends a decree for execution to itself as a Court invested with the jurisdiction of a Court of Small Causes,—

the documents mentioned in section 224 of the Code of Civil Procedure¹ shall not be sent with the decree unless in any case the Court, by order in writing, requires them to be sent.

Y of 1882.

35. (1) Where

¹ See the revised edition, as modified up to 1st December, 1899.

Provincial Small Cause Courts. [ACT IX
(Chapter V.—Supplemental Provisions.—Sections
29-32.)

(2) The relation of the District Court to a Court of Small Causes, with respect to administrative control, shall be the same as that of the District Court to a Civil Court of the lowest grade competent to try an original suit of the value of five thousand rupees in that portion of the territories administered by the Local Government in which the Court of Small Causes is established.

Seal. 29. A Court of Small Causes shall use a seal of such form and dimensions as are prescribed by the Local Government.

Abolition of Courts of Small Causes. 30. The Local Government may, by order in writing, abolish a Court of Small Causes.

Saving of power to appoint Judge of Court of Small Causes to other office. 31. (1) Nothing in this Act shall be construed to prevent the Local Government from appointing a person who is a Judge or Additional Judge of a Court of Small Causes to be also a Judge of any other Civil Court¹ or to be a Magistrate of any class or to hold any other public office.

(2) When a Judge or Additional Judge is so appointed, the ministerial officers of his Court shall, subject to any rules which the Local Government may make in this behalf, be deemed to be ministerial officers appointed to aid him in the discharge of the duties of the other office.

Application of Act to Courts invested with jurisdiction of Court of Small Causes. 32. (1) So much of Chapters III and IV as relates to—

- (a) the nature of the suits cognizable by Courts of Small Causes,
- (b) the exclusion of the jurisdiction of other Courts in those suits,
- (c) the practice and procedure of Courts of Small Causes,
- (d) appeal from certain orders of those Courts and revision of cases decided by them, and

(e) the

¹ For instances of notifications issued under this power, see United Provinces List of Local Rules and Orders, Ed. 1905, Pt. I, Vol. I, p. 151

(Chapter V.—*Supplemental Provisions.*—Sections 33-34.)

- (e) the finality of their decrees and orders subject to such appeal and revision as are provided by this Act,

applies to Courts invested by or under any enactment for the time being in force with the jurisdiction of a Court of Small Causes so far as regards the exercise of that jurisdiction by those Courts.

(2) Nothing in sub-section (1) with respect to Courts invested with the jurisdiction of a Court of Small Causes applies to suits instituted or proceedings commenced in those Courts before the date on which they were invested with that jurisdiction.

33. A Court invested with the jurisdiction of a Court of Small Causes, with respect to the exercise of that jurisdiction, and the same Court, with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure,¹ be deemed to be different Courts.

Application of Act and Code to Courts so invested as to two Courts.

V of 1882.

34. Notwithstanding anything in the last two foregoing sections,—

Modification of Code as so applied.

- (a) when, in exercise of the jurisdiction of a Court of Small Causes, a Court invested with that jurisdiction sends a decree for execution to itself as a Court having jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, or

- (b) when a Court, in the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, sends a decree for execution to itself as a Court invested with the jurisdiction of a Court of Small Causes,—

the documents mentioned in section 224 of the Code of Civil Procedure¹ shall not be sent with the decree unless in any case the Court, by order in writing, requires them to be sent.

IV of 1882.

35. (1) Where

¹ See the revised edition, as modified up to 1st December, 1892.

Provincial Small Cause Courts. [ACT IX
(Chapter V.—Supplemental Provisions.—Sections
35-37.)

Continuance
of proceed-
ing, of
abolished
Courts.

35. (1) Where a Court of Small Causes, or a Court invested with the jurisdiction of a Court of Small Causes, has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to the case, whether before or after decree, which, if the Court had not ceased to have jurisdiction, might have been had therein, may be had in the Court which, if the suit out of which the proceeding has arisen were about to be instituted, would have jurisdiction to try the suit.

(2) Nothing in this section applies to cases for which special provision is made in the Code of Civil Procedure,¹ as extended to Courts of Small Causes, or XIV a
in any other enactment for the time being in force.

Amendment
of Indian
Limitation
Act.

36. In the third division of the second schedule to the Indian Limitation Act, 1877,²—

XV of 1

(a) after No. 160 the following shall be inserted, namely :—

"160A. For a review of judgment by a Provincial Court of Small Causes, or by a Court invested with the jurisdiction of a Provincial Court of Small Causes when exercising that jurisdiction.	Ditto	The date of the decree or order."
--	-------	-----------------------------------

and (b) in No. 173, the words, figures and letter "No. 160A and" shall be inserted before the word and figures "No. 162."

Publication
of certain
orders.

37. All orders required by this Act to be made in writing by the Local Government shall be published in the official Gazette.

THE FIRST SCHEDULE.

[Repealed by the Repealing and Amending Act, 1891
(XII of 1891).]

THE

¹ See the revised edition, as modified up to 1st December, 1890.

² See the revised edition, as modified up to 31st December, 1900.

(*The Second Schedule.—Suits excepted from the cognizance of a Court of Small Causes.*)

THE SECOND SCHEDULE.

SUITS EXCEPTED FROM THE COGNIZANCE OF A COURT OF SMALL CAUSES.

(*See section 15.*)

- (1) A suit concerning an act or orders purporting to be done or made by the Governor General in Council or a Local Government, or by the Governor General or a Governor, or by a Member of the Council of the Governor General or of the Governor of Madras or Bombay, in his official capacity, or concerning an act purporting to be done by any person by order of the Governor General in Council or a Local Government;
- (2) a suit concerning an act purporting to be done by any person in pursuance of a judgment or order of a Court or of a judicial officer acting in the execution of his office;
- (3) a suit concerning an act or order purporting to be done or made by any other officer of the Government in his official capacity, or by a Court of Wards, or by an officer of a Court of Wards in the execution of his office;
- (4) a suit for the possession of immoveable property or for the recovery of an interest in such property;
- (5) a suit for the partition of immoveable property;
- (6) a suit by a mortgagee of immoveable property for the foreclosure of the mortgage or for the sale of the property, or by a mortgagor of immoveable property for the redemption of the mortgage;
- (7) a suit for the assessment, enhancement, abatement or apportionment of the rent of immoveable property;
- (8) a suit for the recovery of rent, other than house-rent, unless the Judge of the Court of Small Causes has been expressly invested by the Local Government with authority to exercise jurisdiction with respect thereto;¹

(9) a

¹ For notifications issued under this article for—

(1) the Madras Presidency, *see* Madras Local Rules and Orders, Ed. 1904, Vol. I, Pt. II, p. 143;

(2) Burma, *see* the Burma Rules Manual, Ed. 1903, Vol. I, pp. 55 and 56.

Provincial Small Cause Courts. [ACT IX

(The Second Schedule.—Suits excepted from the cognizance of a Court of Small Causes.)

- (9) a suit concerning the liability of land to be assessed to land-revenue;
- (10) a suit to restrain waste;
- (11) a suit for the determination or enforcement of any other right to or interest in immoveable property;
- (12) a suit for the possession of an hereditary office or of an interest in such an office, including a suit to establish an exclusive or periodically recurring right to discharge the functions of an office;
- (13) a suit to enforce payment of the allowance or fees respectively called *mdlikāna* and *kakk*, or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immoveable property or in an hereditary office or in a shrine or other religious institution;
- (14) a suit to recover from a person to whom compensation has been paid under the Land Acquisition Act, 1870,¹ X of 1870, the whole or any part of the compensation;
- (15) a suit for the specific performance or rescission of a contract;
- (16) a suit for the rectification or cancellation of an instrument;
- (17) a suit to obtain an injunction;
- (18) a suit relating to a trust, including a suit to make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust, and a suit by a co-trustee to enforce against the estate of a deceased trustee a claim for contribution;
- (19) a suit for a declaratory decree, not being a suit instituted under section 283 or section 332 of the Code XIV of 1852 of Civil Procedure²;
- (20) a suit instituted under section 283 or section 332 of the Code of Civil Procedure³;
- (21) a suit to set aside an attachment by Court or a revenue-authority, or a sale, mortgage, lease or other transfer by a Court or a revenue-authority or by a guardian;
- (22) a suit for property which the plaintiff has conveyed while insane;

¹ See now the Land Acquisition Act, 1894 (I of 1894), *see* *infra*.

² See the revised edition, as modified up to 1st December, 1

(The Second Schedule.—Suits excepted from the cognizance of a Court of Small Causes.)

XIV of 1882.

X of 1885.

V of 1881.

- (23) a suit to alter or set aside a decision, decree or order of a Court or of a person acting in a judicial capacity ;
- (24) a suit to contest an award ;
- (25) a suit upon a foreign judgment as defined in the Code of Civil Procedure¹ or upon a judgment obtained in British India ;
- (26) a suit to compel a refund of assets improperly distributed under section 295 of the Code of Civil Procedure¹ ;
- (27) a suit under the Indian Succession Act, 1865,² section 320 or section 321, or under the Probate and Administration Act, 1881,³ section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets ;
- (28) a suit for a legacy or for the whole or a share of a residue bequeathed by a testator, or for the whole or a share of the property of an intestate ;
- (29) a suit—
- (a) for a dissolution of partnership or for the winding-up of the business of a partnership after its dissolution ;
 - (b) for an account of partnership-transactions ; or
 - (c) for a balance of partnership-account, unless the balance has been struck by the parties or their agents ;
- (30) a suit for an account of property and for its due administration under decree ;
- (31) any other suit for an account, including a suit by a person claiming property or a share of property wrongfully received by the defendant ;
- (32) a suit for a general average loss or for salvage ;
- (33) a suit for compensation in respect of collision between ships ;
- (34) a suit on a policy of insurance or for the recovery of any premium paid under any such policy ;
- (35) a

¹ See the revised edition, as modified up to 1st December, 1899.² General Acts, Ed. 1898, Vol. I, p. 468.³ General Acts, Ed. 1898, Vol. III, p. 832.

Provincial Small Cause Courts. [ACT IX
(The Second Schedule.—Suits excepted from the
cognizance of a Court of Small Causes.)

- (9) a suit concerning the liability of land to be assessed to land-revenue;
- (10) a suit to restrain waste;
- (11) a suit for the determination or enforcement of any other right to or interest in immoveable property;
- (12) a suit for the possession of an hereditary office or of an interest in such an office, including a suit to establish an exclusive or periodically recurring right to discharge the functions of an office;
- (13) a suit to enforce payment of the allowance or fees respectively called *mālikdāna* and *kakk*, or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immoveable property or in an hereditary office or in a shrine or other religious institution;
- (14) a suit to recover from a person to whom compensation has been paid under the Land Acquisition Act, 1870,¹ X of 1870. the whole or any part of the compensation;
- (15) a suit for the specific performance or rescission of a contract;
- (16) a suit for the rectification or cancellation of an instrument;
- (17) a suit to obtain an injunction;
- (18) a suit relating to a trust, including a suit to make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust, and a suit by a co-trustee to enforce against the estate of a deceased trustee a claim for contribution;
- (19) a suit for a declaratory decree, not being a suit instituted under section 288 or section 332 of the Code XIV of 1852. of Civil Procedure²;
- (20) a suit instituted under section 288 or section 332 of the Code of Civil Procedure³;
- (21) a suit to set aside an attachment by Court or a revenue-authority, or a sale, mortgage, lease or other transfer by a Court or a revenue-authority or by a guardian;
- (22) a suit for property which the plaintiff has conveyed while insane;
- (23) a

¹ See now the Land Acquisition Act, 1894 (1 of 1894), reprinted with footnotes.

² See the revised edition, as modified up to 1st December, 1899.

(*The Second Schedule.—Suits excepted from the cognizance of a Court of Small Causes.*)

XIV of 1882.

X of 1885.

V of 1881.

- (23) a suit to alter or set aside a decision, decree or order of a Court or of a person acting in a judicial capacity ;
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- (25) a suit upon a foreign judgment as defined in the Code of Civil Procedure¹ or upon a judgment obtained in British India ;
- (26) a suit to compel a refund of assets improperly distributed under section 295 of the Code of Civil Procedure¹ ;
- (27) a suit under the Indian Succession Act, 1865,² section 320 or section 321, or under the Probate and Administration Act, 1881,³ section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets ;
- (28) a suit for a legacy or for the whole or a share of a residue bequeathed by a testator, or for the whole or a share of the property of an intestate ;
- (29) a suit—
 - (a) for a dissolution of partnership or for the winding-up of the business of a partnership after its dissolution ;
 - (b) for an account of partnership-transactions ; or
 - (c) for a balance of partnership-account, unless the balance has been struck by the parties or their agents ;
- (30) a suit for an account of property and for its due administration under decree ;
- (31) any other suit for an account, including a suit by a mortgagee after the mortgage has been satisfied ;
- (32) a suit for a general average loss or for salvage ;
- (33) a suit for compensation in respect of collision between ships ;
- (34) a suit on a policy of insurance or for the recovery of any premium paid under any such policy ;
- (35) a

¹ See the revised edition, as modified up to 1st December, 1899.

² General Acts, Ed. 1898, Vol. I, p. 468.

³ General Acts, Ed. 1898, Vol. III, p. 839.

Provincial Small Cause Courts. [ACT IX
(The Second Schedule.—Suits excepted from the
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(35) a suit for compensation—

- (a) for loss occasioned by the death of a person caused by actionable wrong;
- (b) for wrongful arrest, restraint or confinement;
- (c) for malicious prosecution;
- (d) for libel;
- (e) for slander;
- (f) for adultery or seduction;
- (g) for breach of contract of betrothal or promise of marriage;
- (h) for inducing a person to break a contract made with the plaintiff;
- (i) for obstruction of an easement or diversion of a watercourse;
- (j) for illegal, improper or excessive distress or attachment;
- (k) for improper arrest under Chapter XXXIV of the Code of Civil Procedure,¹ or in respect of the issue of an injunction wrongfully obtained under Chapter XXXV of that Code; or
- (l) for injury to the person in any case not specified in the foregoing sub-clauses of this clause;

XIV of 18

(36) a suit by a Muhammadan for exigible (*mu'ajjal*) or deferred (*mu'wajjal*) dower;

(37) a suit for the restitution of conjugal rights, for the recovery of a wife, for the custody of a minor, or for a divorce;

(38) a suit relating to maintenance;

(39) a suit for arrears of land-revenue, village-expenses or other sums payable to the representative of a village-community or to his heir or other successor in title;

(40) a suit for profits payable by the representative of a village-community or by his heir or other successor in title after payment of land-revenue, village-expenses and other sums;

(41) a suit for contribution by a sharer in joint property in respect of a payment made by him of money due from

1887.] *Provincial Small Cause Courts.*

(The Second Schedule.—Suits excepted from the cognizance of a Court of Small Causes.)

from a co-sharer, or by a manager of joint property, or a member of an undivided family, in respect of a payment made by him on account of the property or family ;

- (12) a suit by one of several joint mortgagors of immoveable property for contribution in respect of money paid by him for the redemption of the mortgaged property ;
- (43) a suit against the Government to recover money paid under protest in satisfaction of a claim made by a revenue-authority on account of an arrear of land-revenue or of a demand recoverable as an arrear of land-revenue ;
- (44) a suit the cognizance whereof by a Court of Small Causes is barred by any enactment for the time being in force.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

THE INDIAN EASEMENTS ACT, 1882,
(ACT V OF 1882.)

AS AMENDED BY THE REPEALING AND AMENDING ACT, 1891
(XII OF 1891).

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ACT No. V OF 1882.¹
(As amended by Act XII of 1891.)

[17th February, 1882.]

An Act to define and amend the law relating
to Easements and Licenses.

WHEREAS it is expedient to define and amend Preamble.
the law relating to Easements and Licenses; It is
hereby enacted as follows:—

PRELIMINARY.

1. This Act may be called the Indian Easements Short title.
Act, 1882:

² It extends to the territories respectively adminis- Local extent.
tered by the Governor of Madras in Council and the
Chief Commissioners of the Central Provinces and
Coorg;

and it shall come into force on the first day of Commence-
ment.
July, 1882.

2. Nothing herein contained shall be deemed to Savings.
affect any law not hereby expressly repealed; or to
derogate from—

(a) any right of the Government to regulate the
collection, retention and distribution of the water of
rivers and streams flowing in natural channels, and
of natural lakes and ponds, or of the water flowing,
collected, retained or distributed in or by any channel

or

or other work constructed at the public expense for irrigation;

(b) any customary or other right (not being a license) in or over immoveable property which the Government, the public or any person may possess irrespective of other immoveable property; or

(c) any right acquired, or arising out of a relation created, before this Act comes into force.

Repeal of
Act XV of
1877, sec-
tions 26 and
27.

3. Sections 26 and 27 of the¹ Indian Limitation Act, 1877, and the definition of "easement" contained in that Act, are repealed in the territories to which this Act extends. All references in any Act or Regulation to the said sections, or to sections 27 and 28 of Act No. IX of 1871,² shall, in such territories, be read as made to sections fifteen and sixteen of this Act.

CHAPTER I.

OF EASEMENTS GENERALLY.

"Easement"
defined.

4. An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.

Dominant
and servient
heritages and
owners.

The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

Explanation.—In the first and second clauses of this section, the expression "land" includes also things permanently attached to the earth: the expression "beneficial enjoyment" includes also possible convenience, remote advantage, and even a mere amenity; and the expression "to do something" includes

¹ For Act XV of 1877, see the revised edition, as modified up to 31st December, 1900.

² Act IX of 1871 was repealed by Act XV of 1877.

includes removal and appropriation by the dominant owner for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage or anything growing or subsisting thereon.

Illustrations.

(a) A, as the owner of a certain house, has a right of way thither over his neighbour B's land for purposes connected with the beneficial enjoyment of the house. This is an easement.

(b) A, as the owner of a certain house, has the right to go on his neighbour B's land, and to take water for the purposes of his household out of a spring therein. This is an easement.

(c) A, as the owner of a certain house, has the right to conduct water from B's stream to supply the fountains in the garden attached to the house. This is an easement.

(d) A, as the owner of a certain house and farm, has the right to graze a certain number of his own cattle on B's field, or to take for the purpose of being used in the house, by himself, his family, guests, lodgers and servants, water, or fish out of C's tank, or timber out of D's wood, or to use, for the purpose of manuring, his land, the leaves which have fallen from the trees on E's land. These are easements.

(e) A dedicates to the public the right to occupy the surface of certain land for the purpose of passing and re-passing. This right is not an easement.

(f) A is bound to cleanse a watercourse running through his land and keep it free from obstruction for the benefit of B, a lower riparian owner. This is not an easement.

5. Easements are either continuous or discontinuous, apparent or non-apparent.

A continuous easement is one whose enjoyment is, or may be, continual without the act of man.

A discontinuous easement is one that needs the act of man for its enjoyment.

An apparent easement is one the existence of which is shown by some permanent sign which, upon careful inspection by a competent person, would be visible to him.

A non-apparent easement is one that has no such sign.

Illustrations.

(a) A right annexed to B's house to receive light by the windows without obstruction by his neighbour A. This is a continuous easement.

(b) A right

Continuous
and discontinuous,
apparent
and non-apparent,
easements.

(b) A right of way annexed to A's house over B's land. This is a discontinuous easement.

(c) Rights annexed to A's land to lead water thither across B's land by an aqueduct and to draw off water thence by a drain. The drain would be discovered upon careful inspection by a person conversant with such matters. These are apparent easements.

(d) A right annexed to A's house to prevent B from building on his own land. This is an non-apparent easement.

Easement for limited time or on condition.

6. An easement may be permanent, or for a term of years or other limited period, or subject to periodical interruption, or exercisable only at a certain place, or at certain times, or between certain hours, or for a particular purpose, or on condition that it shall commence or become void or voidable on the happening of a specified event or the performance or non-performance of a specified act.

Easements restrictive of certain rights; Exclusive right to enjoy.

7. Easements are restrictions of one or other of the following rights (namely):—

(a) the exclusive right of every owner of immoveable property (subject to any law for the time being in force) to enjoy and dispose of the same and all products thereof and accessions thereto;

Rights to advantages arising from situation.

(b) the right of every owner of immoveable property (subject to any law for the time being in force) to enjoy without disturbance by another the natural advantages arising from its situation.

Illustrations of the Rights above referred to.

(a) The exclusive right of every owner of land in a town to build on such land, subject to any municipal law for the time being in force.

(b) The right of every owner of land that the air passing thereto shall not be unreasonably polluted by other persons.

(c) The right of every owner of a house that his physical comfort shall not be interfered with materially and unreasonably by noise or vibration caused by any other person.

(d) The right of every owner of land to so much light and air as pass vertically thereto.

(e) The right of every owner of land that such land, in its natural condition, shall have the support naturally rendered by the subjacent soil of another person.

Explanation.

Explanation.—Land is in its natural condition when it is not excavated and not subjected to artificial pressure; and the "subjacent and adjacent soil" mentioned in this illustration means such soil only as in its natural condition would support the dominant heritage in its natural condition.

(f) The right of every owner of land that, within his own limits, the water which naturally passes or percolates by, over or through his land shall not, before so passing or percolating, be unreasonably polluted by other persons.

(g) The right of every owner of land to collect and dispose within his own limits of all water under the land which does not pass in a defined channel and all water on its surface which does not pass in a defined channel.

(A) The right of every owner of land that the water of every natural stream which passes by, through or over his land in a defined natural channel shall be allowed by other persons to flow within such owner's limits without interruption and without material alteration in quantity, direction, force or temperature: the right of every owner of land abutting on a natural lake or pond into or out of which a natural stream flows, that the water of such lake or pond shall be allowed by other persons to remain within such owner's limits without material alteration in quantity or temperature.

(i) The right of every
ally rising in, or falling c
channels, shall be allowec
to run naturally thereto.

(j) The right of every owner of land abutting on a natural stream, lake or pond to use and consume its water for drinking, household purposes and watering his cattle and sheep; and the right of every such owner to use and consume the water for irrigating such land, and for the purposes of any manufactory situate thereon, provided that he does not thereby cause material injury to other like owners.

a natural and known course.

CHAPTER II.

THE IMPOSITION, ACQUISITION AND TRANSFER OF
EASEMENTS.

8. An easement may be imposed by any one in the circumstances, and to the extent, in and to which he

Who may impose easements.

he may transfer his interest in the heritage on which the liability is to be imposed.

Illustrations:

(a) A is tenant of B's land under a lease for an unexpired term of twenty years, and has power to transfer his interest under the lease. A may impose an easement on the land to continue during the time that the lease exists or for any shorter period.

(b) A is tenant for his life of certain land with remainder to B absolutely. A cannot, unless with B's consent, impose an easement thereon which will continue after the determination of his life-interest.

(c) A, B and C are co-owners of certain land. A cannot, without the consent of B and C, impose an easement on the land or on any part thereof.

(d) A and B are lessees of the same lessor, A of a field X for a term of five years, and B of a field Y for a term of ten years. A's interest under his lease is transferable; B's is not. A may impose on X, in favour of B, a right of way terminable with A's lease.

Servient
owners.

9. Subject to the provisions of section eight, a servient owner may impose on the servient heritage any easement that does not lessen the utility of the existing easement. But he cannot, without the consent of the dominant owner, impose an easement on the servient heritage which would lessen such utility.

Illustrations.

(a) A has, in respect of his mill, a right to the uninterrupted flow thereto, from sunrise to noon, of the water of B's stream. B may grant to C the right to divert the water of the stream from noon to sunset: provided that A's supply is not thereby diminished.

(b) A has, in respect of his house, a right of way over B's land. B may grant to C, as the owner of a neighbouring farm, the right to feed his cattle on the grass growing on the way: provided that A's right of way is not thereby obstructed.

Lessor and
mortgagor.

10. Subject to the provisions of section eight, a lessor may impose, on the property leased, any easement that does not derogate from the rights of the lessee as such, and a mortgagor may impose, on the property mortgaged, any easement that does not render

the

the security insufficient. But a lessor or mortgagor cannot, without the consent of the lessee or mortgagee, impose any other easement on such property, unless it be to take effect on the termination of the lease or the redemption of the mortgage.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

11. No lessee or other person having a derivative interest may impose on the property held by him as such an easement to take effect after the expiration of his own interest, or in derogation of the right of the lessor or the superior proprietor. Lessee.

12. An easement may be acquired by the owner of the immoveable property for the beneficial enjoyment of which the right is created, or, on his behalf, by any person in possession of the same. Who may acquire easements.

One of two or more co-owners of immoveable property may, as such, with or without the consent of the other or others, acquire an easement for the beneficial enjoyment of such property.

No lessee of immoveable property can acquire, for the beneficial enjoyment of other immoveable property of his own, an easement in or over the property comprised in his lease.

13. Where one person transfers or bequeaths immoveable property to another,— Easements of necessity and quasi-easements.

(a) if an easement in other immoveable property of the transferor or testator is necessary for enjoying the subject of the transfer or bequest, the transferee or legatee shall be entitled to such easement; or

(b) if such an easement is apparent and continuous and necessary for enjoying the said subject as it was enjoyed when the transfer or bequest took effect, the transferee or legatee shall, unless a different intention is expressed or necessarily implied, be entitled to such easement;

(c) if

he may transfer his interest in the heritage on which the liability is to be imposed.

Illustrations:

(a) A is tenant of B's land under a lease for an unexpired term of twenty years, and has power to transfer his interest under the lease. A may impose an easement on the land to continue during the time that the lease exists or for any shorter period.

(b) A is tenant for his life of certain land with remainder to B absolutely. A cannot, unless with B's consent, impose an easement thereon which will continue after the determination of his life-interest.

(c) A, B and C are co-owners of certain land. A cannot, without the consent of B and C, impose an easement on the land or on any part thereof.

(d) A and B are lessees of the same lessor, A of a field X for a term of five years, and B of a field Y for a term of ten years. A's interest under his lease is transferable; B's is not. A may impose on X, in favour of B, a right of way terminable with A's lease.

Servient
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Illustrations.

(a) A has, in respect of his mill, a right to the uninterrupted flow thereto, from sunrise to noon, of the water of B's stream. B may grant to C the right to divert the water of the stream from noon to sunset: provided that A's supply is not thereby diminished.

(b) A has, in respect of his house, a right of way over B's land. B may grant to C, as the owner of a neighbouring farm, the right to feed his cattle on the grass growing on the way: provided that A's right of way is not thereby obstructed.

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Lessor and
mortgagor.

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Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

11. No lessee or other person having a derivative interest may impose on the property held by him as such an easement to take effect after the expiration of his own interest, or in derogation of the right of the lessor or the superior proprietor. *Lessee.*

12. An easement may be acquired by the owner of the immoveable property for the beneficial enjoyment of which the right is created, or, on his behalf, by any person in possession of the same. *Who may acquire easements.*

One of two or more co-owners of immoveable property may, as such, with or without the consent of the other or others, acquire an easement for the beneficial enjoyment of such property.

No lessee of immoveable property can acquire, for the beneficial enjoyment of other immoveable property of his own, an easement in or over the property comprised in his lease.

13. Where one person transfers or bequeaths immoveable property to another,— *Easements of necessity and quasi-easements.*

(a) if an easement in other immoveable property of the transferor or testator is necessary for enjoying the subject of the transfer or bequest, the transferee or legatee shall be entitled to such easement; or

(b) if such an easement is apparent and continuous and necessary for enjoying the said subject as it was enjoyed when the transfer or bequest took effect, the transferee or legatee shall, unless a different intention is expressed or necessarily implied, be entitled to such easement;

(c) if

(c) if an easement in the subject of the transfer or bequest is necessary for enjoying other immoveable property of the transferor or testator, the transferor or the legal representative of the testator shall be entitled to such easement ; or

(d) if such an easement is apparent and continuous and necessary for enjoying the said property as it was enjoyed when the transfer or bequest took effect, the transferor, or the legal representative of the testator, shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

Where a partition is made of the joint property of several persons,—

(e) if an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entitled to such easement, or

(f) if such an easement is apparent and continuous and necessary for enjoying the share of the latter as it was enjoyed when the partition took effect, he shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

The easements mentioned in this section, clauses (a), (c) and (e), are called easements of necessity.

Where immoveable property passes by operation of law, the persons from and to whom it so passes are, for the purpose of this section, to be deemed, respectively, the transferor and transferee.

Illustrations.

(a) A sells B a field then used for agricultural purposes only. It is inaccessible except by passing over A's adjoining land or by trespassing on the land of a stranger. B is entitled to a right of way, for agricultural purposes only, over A's adjoining land to the field sold.

(b) A, the owner of two fields, sells one to B, and retains the other. The field retained was at the date of the sale used for agricultural purposes only and is inaccessible except by passing over the field sold to B. A is entitled to a right of way, for agricultural purposes only, over B's field to the field retained.

(c) A sells B a house with windows overlooking A's land which A retains. The light which passes over A's land to the

windows

windows is necessary for enjoying the house as it was enjoyed when the sale took effect. B is entitled to the light, and A cannot afterwards obstruct it by building on his land.

(d) A sells B a house with windows overlooking A's land. The light passing over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. Afterwards A sells the land to C. Here C cannot obstruct the light by building on the land, for he takes it subject to the burdens to which it was subject in A's hands.

(e) A is the owner of a house and adjoining land. The house has windows overlooking the land. A simultaneously sells the house to B and the land to C. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. Here A impliedly grants B a right to the light, and C takes the land subject to the restriction that he may not build so as to obstruct such light.

(f) A is the owner of a house and adjoining land. The house has windows overlooking the land. A, retaining the house, sells the land to B, without expressly reserving any easement. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. A is entitled to the light, and B cannot build on the land so as to obstruct such light.

(g) A, the owner of a house, sells B a factory built on adjoining land. B is entitled, as against A, to pollute the air, when necessary, with smoke and vapours from the factory.

(h) A, the owner of two adjoining houses, Y and Z, sell Y to B, and retains Z. B is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Y as it was enjoyed when the sale took effect, and A is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Z as it was enjoyed when the sale took effect.

(i) A, the owner of two adjoining buildings, sell's one to B, retaining the other. B is entitled to a right to lateral support from A's building, and A is entitled to a right to lateral support from B's building.

(j) A, the owner of two adjoining buildings, sells one to B and the other to C. C is entitled to lateral support from B's building, and B is entitled to lateral support from C's building.

(k) A grants lands to B for the purpose of building a house thereon. B is entitled to such amount of lateral and subjacent support from A's land as is necessary for the safety of the house.

(l) Under the Land Acquisition Act, 1870,¹ a Railway Company compulsorily acquires a portion of B's land for the purpose of making a siding. The Company is entitled to such amount of lateral support from B's adjoining land as is essential for the safety of the siding.

(m) Owing to the partition of joint property, A becomes the owner of an upper room in a building, and B becomes the owner of the portion of the building immediately beneath it. A is entitled to such amount of vertical support from B's portion as is essential for the safety of the upper room.

(n) A lets a house and grounds to B for a particular business. B has no access to them other than by crossing A's land. B is entitled to a right of way over that land suitable to the business to be carried on by B in the house and grounds.

Direction of
way of neces-
sity.

14. When² [a right] to a way of necessity is created under section thirteen, the transferor, the legal representative of the testator, or the owner of the share over which the right is exercised, as the case may be, is entitled to set out the way; but it must be reasonably convenient for the dominant owner.

When the person so entitled to set out the way refuses or neglects to do so, the dominant owner may set it out.

acquisition
by prescrip-
tion.

15. Where the access and use of light or air, to and for any building have been peaceably enjoyed therewith, as an easement, without interruption; and for twenty years,

and where support from one person's land, or things affixed thereto, has been peaceably received by another person's land subjected to artificial pressure, or by things affixed thereto, as an easement, without interruption, and for twenty years,

and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years,

the

¹ See now the Land Acquisition Act, 1894 (I of 1894), by which Act X of 1870 has been repealed.

² The words "a right" were substituted for the word "right" by the Repealing and Amending Act, 1891 (XII of 1891), Sch. II, Pt. I, General Acts, Vol. VI, Ed. 1898, p. 32.

the right to such access and 'use of light or air support or other easement shall be absolute.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation I.—Nothing is an enjoyment within the meaning of this section when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.

Explanation II.—Nothing is an interruption within the meaning of this section, unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Explanation III.—Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this section.

Explanation IV.—In the case of an easement to pollute water, the said period of twenty years begins when the pollution first prejudices preceptibly the servient heritage.

When the property over which a right is claimed under this section belongs to Government, this section shall be read as if for the words "twenty years" the words "sixty years" were substituted.

Illustrations.

(a)
The de
way.

openly enjoyed by him claiming title thereto as an easement and as of right, without interruption, from 1st January, 1862, to 1st January, 1882. The plaintiff is entitled to judgment.

(d) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that for a year of that time the plaintiff was entitled to possession of the servient heritage as lessee thereof and enjoyed the right as such lessee. The suit shall be dismissed, for the right of way has not been enjoyed "as an easement" for twenty years.

(e) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had admitted that the user was not of right and asked his leave to enjoy the right. The suit shall be dismissed, for the right of way has not been enjoyed "as of right" for twenty years.

Exclusion in
favour of
reversioner
of servient
heritage.

16. Provided that, when any land upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land.

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years, but B shows that during ten of these years C had a life-interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, as only proved enjoyment for fifteen years.

Rights which
cannot be
acquired by
prescription.

17. Easements acquired under section fifteen are said to be acquired by prescription, and are called prescriptive rights.

None

None of the following rights can be so acquired :—

(a) a right which would tend to the total destruction of the subject of the right, or the property on which, if the acquisition were made, liability would be imposed ;

(b) a right to the free passage of light or air to an open space of ground ;

(c) a right to surface-water not flowing in a stream and not permanently collected in a pool, tank or otherwise ;

(d) a right to underground water not passing in a defined channel.

18. An easement may be acquired in virtue of a local custom. Such easements are called customary easements.

Illustrations.

(a) By the custom of a certain village every cultivator of village land is entitled, as such, to graze his cattle on the common pasture. A, having become the tenant of a plot of uncultivated land in the village, breaks up and cultivates that plot. He thereby acquires an easement to graze his cattle in accordance with the custom.

(b) By the custom of a certain town no owner or occupier of a house can open a new window therein so as substantially to invade his neighbour's privacy. A builds a house in the town near B's house. A thereupon acquires an easement that he shall not open new windows in his house so as to command a view of the portions of A's house which are ordinarily excluded from observation, and B acquires a like easement with respect to A's house.

19. Where the dominant heritage is transferred or devolves, by act of parties or by operation of law, the transfer or devolution shall, unless a contrary intention appears, be deemed to pass the easement to the person in whose favour the transfer or devolution takes place.

Transfer of dominant heritage passes easement.

Illustrations.

A has certain land to which a right of way is annexed. A lets the land to B for twenty years. The right of way vests in B and his legal representative so long as the lease continues.

CHAPTER III.

THE INCIDENTS OF EASEMENTS.

Rules controlled by contract or title.

20. The rules contained in this chapter are controlled by any contract between the dominant and servient owners relating to the servient heritage, and by the provisions of the instrument or decree, if any, by which the easement referred to was imposed.

Incidents of customary easements.

And when any incident of any customary easement is inconsistent with such rules, nothing in this chapter shall affect such incident.

Bar to use unconnected with enjoyment.

21. An easement must not be used for any purpose not connected with the enjoyment of the dominant heritage.

Illustrations.

(a) A, as owner of a farm Y, has a right of way over B's land to Y. Lying beyond Y, A has another farm Z, the beneficial enjoyment of which is not necessary for the beneficial enjoyment of Y. He must not use the easement for the purpose of passing to and from Z.

(b) A, as owner of a certain house, has a right of way to and from it. For the purpose of passing to and from the house, the right may be used, not only by A, but by the members of his family, his guests, lodgers, servants, workmen, visitors and customers; for this is a purpose connected with the enjoyment of the dominant heritage. So, if A lets the house, he may use the right of way for the purpose of collecting the rent and seeing that the house is kept in repair.

Exercise of easement.

22. The dominant owner must exercise his right in the mode which is least onerous to the servient owner; and when the exercise of an easement can without detriment to the dominant owner be confined to a determinate part of the servient heritage, such exercise shall, at the request of the servient owner, be so confined.

Confinement of exercise of easement.

Illustrations.

(a) A has a right of way over B's fields. A must enter the way at either end, and not at any intermediate point.

(b) A has a right annexed to his house to cut thatching-grass in B's swamp. A, when exercising his easement, must cut the grass so that the plants may not be destroyed.

23. Subject

23. Subject to the provisions of section twenty-two, the dominant owner may, from time to time, alter the mode and place of enjoying the easement, provided that he does not thereby impose any additional burden on the servient heritage. Right to alter mode of enjoyment.

Exception.—The dominant owner of a right of way cannot vary his line of passage at pleasure, even though he does not thereby impose any additional burden on the servient heritage.

Illustrations.

(a) A, the owner of a saw-mill, has a right to a flow of water sufficient to work the mill. He may convert the saw-mill into a corn-mill, provided that it can be worked by the same amount of water.

(b) A has a right to discharge on B's land the rain-water from the eaves of A's house. This does not entitle A to advance his eaves if, by so doing, he imposes a greater burden on B's land.

(c) A, as the owner of a paper-mill, acquires a right to pollute a stream by pouring in the refuse-liquor produced by making in the mill paper from rags. He may pollute the stream by pouring in similar liquor produced by making in the mill paper by a new process from bamboos, provided that he does not substantially increase the amount, or injuriously change the nature, of the pollution.

(d) A, riparian owner, acquires as against the lower riparian owners, a prescriptive right to pollute a stream by throwing sawdust into it. This does not entitle A to pollute the stream by discharging into it poisonous liquor.

24. The dominant owner is entitled, as against the servient owner, to do all acts necessary to secure the full enjoyment of the easement¹; but such acts must be done at such time and in such manner as, without detriment to the dominant owner, to cause the servient owner as little inconvenience as possible; and the dominant owner must repair, as far as practicable, the damage (if any) caused by the act to the servient heritage. Right to do acts to secure enjoyment.

Rights

¹ As to abatement of obstruction of easement, see s. 26, *infra*.

Accessory
rights.

Rights to do acts necessary to secure the full enjoyment of an easement are called accessory rights.

Illustrations.

(a) A has an easement to lay pipes in B's land to convey water to A's cistern. A may enter and dig the land in order to mend the pipes, but he must restore the surface to its original state.

(b) A has an easement of a drain through B's land. The sewer with which the drain communicates is altered. A may enter upon B's land and alter the drain, to adapt it to the new sewer, provided that he does not thereby impose any additional burden on B's land.

(c) A, as owner of a certain house, has a right of way over B's land. The way is out of repair, or a tree is blown down and falls across it. A may enter on B's land and repair the way or remove the tree from it.

(d) A, as owner of a certain field, has a right of way over B's land. from
the way and that
the deviation is reasonable.

(e) A, as owner of a certain house, has a right of way over B's field. A may remove rocks to make the way.

(f) A has an easement of support from B's wall. The wall gives way. A may enter upon B's land and repair the wall.

(g) A has an easement to have his land flooded by means of a dam in B's stream. The dam is half swept away by an inundation. A may enter upon B's land and repair the dam.

Liability for
expenses ne-
cessary for
preservation
of easement.

25. The expenses incurred in constructing works or making repairs, or doing any other act necessary for the use or preservation of an easement, must be defrayed by the dominant owner.

Liability for
damage from
want of re-
pair.

26. Where an easement is enjoyed by means of an artificial work, the dominant owner is liable to make compensation for any damage to the servient heritage arising from the want of repair of such work.¹

Servient
owner not
bound to do
anything.

27. The servient owner is not bound to do anything for the benefit of the dominant heritage, and he is entitled, as against the dominant owner, to use
the

¹ As to extinguishment or suspension of easement, see s. 60, *infra*.

the servient heritage in any way consistent with the enjoyment of the easement; but he must not do any act tending to restrict the easement or to render its exercise less convenient.

Illustrations.

(a) A, as owner of a house, has a right to lead water and send sewage through B's land. B is not bound as servient owner to clear the watercourse or scour the sewer.

(b) A grants a right of way through his land to B as owner of a field. A may feed his cattle on grass growing on the way, provided that B's right of way is not thereby obstructed; but he must not build a wall at the end of his land so as to prevent B from going beyond it, nor must he narrow the way so as to render the exercise of the right less easy than it was at the date of the grant.

(c) A, in respect of his house, is entitled to an easement of support from B's wall. B is not bound as servient owner to keep the wall standing and in repair. But he must not pull down or weaken the wall so as to make it incapable of rendering the necessary support.

(d) A, in respect of his mill, is entitled to a watercourse through B's land. B must not drive stakes so as to obstruct the watercourse.

(e) A, in respect of his house, is entitled to a right of light.

28. With respect to the extent of easements and the mode of their enjoyment, the following provisions shall take effect:—

Extent of easements.

An easement of necessity is co-extensive with the necessity as it existed when the easement was imposed.

Easement of necessity.

The extent of any other easement and the mode of its enjoyment must be fixed with reference to the probable intention of the parties, and the purpose for which the right was imposed or acquired.

Other easements.

In the absence of evidence as to such intention and purpose—

(a) a right of way of any one kind does not include a right of way of any other kind:

Right of way.

(b) the

Right to
light or air
acquired by
grant.

(b) the extent of a right to the passage of light or air to a certain window, door or other opening, imposed by a testamentary or non-testamentary instrument, is the quantity of light or air that entered the opening at the time the testator died or the non-testamentary instrument was made :

Prescriptive
right to light
or air.

(c) the extent of a prescriptive right to the passage of light or air to a certain window, door or other opening is that quantity of light or air which has been accustomed to enter that opening during the whole of the prescriptive period irrespectively of the purposes for which it has been used :

Prescriptive
right to
pollute air
and water.

(d) the extent of a prescriptive right to pollute air or water is the extent of the pollution at the commencement of the period of user on completion of which the right arose : and

Other pre-
scriptive
rights.

(e) the extent of every other prescriptive right and the mode of its enjoyment must be determined by the accustomed user of the right.

Increase of
easement.

29. The dominant owner cannot, by merely altering or adding to the dominant heritage, substantially increase an easement.

Where an easement has been granted or bequeathed so that its extent shall be proportionate to the extent of the dominant heritage, if the dominant heritage is increased by alluvion, the easement is proportionately increased, and if the dominant heritage is diminished by diluvion, the easement is proportionately diminished.

Save as aforesaid, no easement is affected by any change in the extent of the dominant or the servient heritage.

Illustrations.

(a) A, the owner of a mill, has acquired a prescriptive right to divert to his mill part of the water of a stream. A alters the machinery of his mill. He cannot thereby increase his right to divert water.

(b) A has acquired an easement to pollute a stream by carrying on a manufacture on its banks by which a certain quantity

of

of foul matter is discharged into it. A extends his works and thereby increases the quantity discharged. He is responsible to the lower riparian owners for injury done by such increase.

(c) A, as the owner of a tract of land, is entitled to plant trees on B's land. A is not thereby entitled to cut down B's trees.

30. Where a dominant heritage is divided between two or more persons, the easement becomes annexed to each of the shares, but not so as to increase substantially the burden of the servient heritage: provided that such annexation is consistent with the terms of the instrument, decree or revenue proceeding (if any) under which the division was made, and, in the case of prescriptive rights, with the user during the prescriptive period.

Partition of dominant heritage.

Illustrations.

(a) A house to which a right of way by a particular path is annexed is divided into two parts, one of which is granted to A, the other to B. Each is entitled, in respect of his part, to a right of way by the same path.

(b) A house to which is annexed the right of drawing water from a well to the extent of fifty buckets a day is divided into two distinct heritages, one of which is granted to A, the other to B. A and B are each entitled, in respect of his heritage, to draw from the well fifty buckets a day; but the amount drawn by both must not exceed fifty buckets a day.

(c) A, having in respect of his house an easement of light, divides the house into three distinct heritages. Each of these continues to have the right to have its windows unobstructed.

31. In the case of excessive user of an easement the servient owner may, without prejudice to any other remedies to which he may be entitled, obstruct the user, but only on the servient heritage: provided that such user cannot be obstructed when the obstruction would interfere with the lawful enjoyment of the easement.

Obstruction in case of excessive user.

Illustration.

A, having a right to the free passage over B's land of light to four windows six feet by four, increases their size and number. It is impossible to obstruct the passage of light to the new windows without also obstructing the passage of light to the ancient windows. B cannot obstruct the excessive user.

CHAPTER IV.

THE DISTURBANCE OF EASEMENTS.

Right to
enjoyment
without
disturbance.

32. The owner or occupier of the dominant heritage is entitled to enjoy the easement without disturbance by any other person.

Illustration.

A, as owner of a house, has a right of way over B's land. C unlawfully enters on B's land, and obstructs A in his right of way. A may sue C for compensation, not for the entry, but for the obstruction.

Suit for dis-
turbance of
easement.

33. The owner of any interest in the dominant heritage, or the occupier of such heritage, may institute a suit for compensation for the disturbance of the easement or of any right accessory thereto; provided that the disturbance has actually caused substantial damage to the plaintiff.

Explanation I.—The doing of any act likely to injure the plaintiff's enjoyment of the easement, or by which the value of the dominant heritage is diminished within the meaning of this section and section thirty-four.

Explanation II.—Where the easement disturbed is a right to the free passage of light passing to the openings in a house, no damage is substantial within the meaning of this section, unless it falls within the first explanation, or interferes materially with the physical comfort of the plaintiff, or prevents him from carrying on his accustomed business in the dominant heritage as beneficially as he had done previous to instituting the suit.

Explanation III.—Where the easement disturbed is a right to the free passage of air to the openings in a house, damage is substantial within the meaning of this section if it interferes materially with the physical comfort of the plaintiff, though it is not injurious to his health.

Illustrations.

(a) A places a permanent obstruction in a path over which B, as tenant of C's house, has a right of way. This is substantial

substantial damage to C, for it may affect the evidence of his reversionary right to the easement.

(b) A, as owner of a house, has a right to walk along one side of B's house. B builds a verandah overhanging the way about ten feet from the ground, and so as not to occasion any inconvenience to foot-passengers using the way. This is not substantial damage to A.

34. The removal of the means of support to which a dominant owner is entitled does not give rise to a right to recover compensation, unless and until substantial damage¹ is actually sustained.

When cause of action arises for removal of support.

35. Subject to the provisions of the Specific Relief Act, 1877,² sections 52 to 57 (both inclusive), an injunction may be granted to restrain the disturbance of an easement—

Injunction to restrain disturbance.

(a) if the easement is actually disturbed,—when compensation for such disturbance might be recovered under this chapter:

(b) if the disturbance is only threatened or intended,—when the act threatened or intended must necessarily, if performed, disturb the easement.

36. Notwithstanding the provisions of section twenty-four, the dominant owner cannot himself abate a wrongful obstruction of an easement.

Abatement of obstruction of easement.

CHAPTER V.

THE EXTINCTION, SUSPENSION AND REVIVAL OF EASEMENTS.

37. When, from a cause which preceded the imposition of an easement, the person by whom it was imposed ceases to have any right in the servient heritage, the easement is extinguished.

Extinction by dissolution of right of servient owner.

Exception.—Nothing in this section applies to an easement lawfully imposed by a mortgagor in accordance with section ten.

Illustrations.

¹ As to meaning of "substantial damage," see s. 33, expl. I, *supra*.

² For Act I of 1877, see General Acts, Vol. III, p. 5.

Illustrations.

(a) A transfers Sultánpur to B on condition that he does not marry C. B imposes an easement on Sultánpur. Then B marries C. B's interest in Sultánpur ends, and with it the easement is extinguished.

(b) A, in 1860, lets Sultánpur to B for thirty years from the date of the lease. B, in 1861, imposes an easement on the land in favour of C, who enjoys the easement peaceably and openly as an easement without interruption for twenty-nine years. B's interest in Sultánpur then ends, and with it C's easement.

(c) A and B, tenants of C, have permanent transferable interests in their respective holdings. A imposes on his holding an easement to draw water from a tank for the purpose of irrigating B's land. B enjoys the easement for twenty years. Then A's rent falls into arrear and his interest is sold. B's easement is extinguished.

(d) A mortgages Sultánpur to B, and lawfully imposes an easement on the land in favour of C in accordance with the provisions of section ten. The land is sold to D in satisfaction of the mortgage-debt. The easement is not thereby extinguished.

38. An easement is extinguished when the dominant owner releases it, expressly or impliedly, to the servient owner. Extinction by release.

Such release can be made only in the circumstances and to the extent in and to which the dominant owner can alienate the dominant heritage.

An easement may be released as to part only of the servient heritage.

Explanation I.—An easement is impliedly released—

(a) where the dominant owner expressly authorizes an act of a permanent nature to be done on the servient heritage, the necessary consequence of which is to prevent his future enjoyment of the easement, and such act is done in pursuance of such authority;

(b) where any permanent alteration is made in the dominant heritage of such a nature as to show that the dominant owner intended to cease to enjoy the easement in future.

Explanation II.

Explanation II.—Mere non-user of an easement is not an implied release within the meaning of this section.

Illustrations.

(a) A, B and C are co-owners of a house to which an easement is annexed. A, without the consent of B and C, releases the easement. This release is effectual only as against A and his legal representative.

(b) A grants B an easement over A's land for the beneficial enjoyment of his house. B assigns the house to C. B then purports to release the easement. The release is ineffectual.

(c) A, having the right to discharge his eavesdroppings into B's yard, expressly authorizes B to build over this yard to a height which will interfere with the discharge. B builds accordingly. A's easement is extinguished to the extent of the interference.

(d) A having an easement of light to a window, builds up that window with bricks and mortar so as to manifest an intention to abandon the easement permanently. The easement is impliedly released.

(e) A, having a projecting roof by means of which he enjoys an easement to discharge eavesdroppings on B's land, permanently alters the roof, so as to direct the rain-water into a different channel and discharge it on C's land. The easement is impliedly released.

39. An easement is extinguished when the servient owner, in exercise of a power reserved in this behalf, revokes the easement.

Extinction by revocation.

40. An easement is extinguished where it has been imposed for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires or the condition is fulfilled.

Extinction on expiration of limited period or happening of dissolving condition.

41. An easement of necessity is extinguished when the necessity comes to an end.

Extinction on termination of necessity.

Illustration.

A grants B a field inaccessible except by passing over A's adjoining land. B afterwards purchases a part of that land over which he can pass to his field. The right of way over A's land which B had acquired is extinguished.

42. An

which it was last enjoyed by any person as dominant owner:

Provided that if, in the case of a discontinuous easement, the dominant owner, within such period, registers, under the Indian Registration Act, 1877,¹ a declaration of his intention to retain such easement, it shall not be extinguished until a period of twenty years has elapsed from the date of the registration. III of 1877.

Where an easement can be legally enjoyed only at a certain place, or at certain times, or between certain hours, or for a particular purpose, its enjoyment during the said period at another place, or at other times, or between other hours, or for another purpose, does not prevent its extinction under this section.

The circumstance that, during the said period, no one was in possession of the servient heritage, or that the easement could not be enjoyed, or that a right accessory thereto was enjoyed, or that the dominant owner was not aware of its existence, or that he enjoyed it in ignorance of his right to do so, does not prevent its extinction under this section.

An easement is not extinguished under this section—

- (a) where the cessation is in pursuance of a contract between the dominant and servient owners;
- (b) where the dominant heritage is held in co-ownership, and one of the co-owners enjoys the easement within the said period; or
- (c) where the easement is a necessary easement.

Where several heritages are respectively subject to rights of way for the benefit of a single heritage, and the ways are continuous, such rights shall, for the purposes of this section, be deemed to be a single easement.

Illustration.

¹ See the revised edition, as modified up to 1st November, 1902.

Illustration.

A has, as annexed to his house, rights of way from the high road thither over the heritages X and Z and the intervening heritage Y. Before the twenty years expire, A exercises his right of way over X. His rights of way over Y and Z are not extinguished.

48. When an easement is extinguished, the rights (if any) accessory thereto are also extinguished. Extinction of accessory rights.

Illustration.

A has an easement to draw water from B's well. As accessory thereto, he has a right of way over B's land to and from the well. The easement to draw water is extinguished under section forty-seven. The right of way is also extinguished.

49. An easement is suspended when the dominant owner becomes entitled to possession of the servient heritage for a limited interest therein, or when the servient owner becomes entitled to possession of the dominant heritage for a limited interest therein. Suspension of easement.

50. The servient owner has no right to require that an easement be continued; and, notwithstanding the provisions of section twenty-six, he is not entitled to compensation for damage caused to the servient heritage in consequence of the extinguishment or suspension of the easement, if the dominant owner has given to the servient owner such notice as will enable him, without unreasonable expense, to protect the servient heritage from such damage. Servient owner not entitled to require continuance.

Where such notice has not been given, the servient owner is entitled to compensation for damage caused to the servient heritage in consequence of such extinguishment or suspension. Compensation for damage caused by extinguishment.

Illustration.

A, in exercise of an easement, diverts to his canal the water of B's stream. The diversion continues for many years, and during that time the bed of the stream partly fills up. A then abandons his easement, and restores the stream to its ancient course. B's land is consequently flooded. B sues A for compensation for the damage caused by the flooding. It is proved that A gave B a month's notice of his intention to abandon the easement and that such notice was sufficient to enable B, without

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Revival of
easements.

unreasonable expense, to have prevented the damage. The suit must be dismissed.

51. An easement extinguished under section forty-five revives (a) when the destroyed heritage is, before twenty years have expired, restored by the deposit of alluvion; (b) when the destroyed heritage is a servient building and before twenty years have expired such building is rebuilt upon the same site; and (c) when the destroyed heritage is a dominant building and before twenty years have expired such building is rebuilt upon the same site and in such a manner as not to impose a greater burden on the servient heritage.

An easement extinguished under section forty-six revives when the grant or bequest by which the unity of ownership was produced is set aside by the decree of a competent Court. A necessary easement extinguished under the same section revives when the unity of ownership ceases from any other cause.

A suspended easement revives if the cause of suspension is removed before the right is extinguished under section forty-seven.

Illustration.

A, as the absolute owner of field Y, has a right of way thither over B's field Z. A obtains from B a lease of Z for twenty years. The easement is suspended so long as A remains lessee of Z. But when A assigns the lease to C, or surrenders it to B, the right of way revives.

CHAPTER VI.

LICENSES.

"License" defined.

52. Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

grantor's
transferee
is bound by
license.

59. When the grantor of the license transfers the property affected thereby, the transferee is not as such bound by the license.

license when
revocable.

60. A license may be revoked by the grantor, unless—

(a) it is coupled with a transfer of property and such transfer is in force :

(b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.

Revocation
express or
implied.

61. The revocation of a license may be express or implied:

Illustrations.

(a) A, the owner of a field, grants a license to B to use a path across it. A, with intent to revoke the license, locks a gate across the path. The license is revoked.

(b) A, the owner of a field, grants a license to B to stack hay on the field. A lets or sells the field to C. The license is revoked.

License when
deemed re-
voked.

62. A license is deemed to be revoked—

(a) when, from a cause preceding the grant of it, the grantor ceases to have any interest in the property affected by the license :

(b) when the licensee releases it, expressly or impliedly, to the grantor or his representative :

(c) where it has been granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires or the condition is fulfilled :

(d) where the property affected by the license is destroyed or by superior force so permanently altered that the licensee can no longer exercise his right :

(e) where the licensee becomes entitled to the absolute ownership of the property affected by the license :

(f) where the license is granted for a specified purpose and the purpose is attained, or abandoned, or becomes impracticable :

(g) where

(g) where the license is granted to the licensee as holding a particular office, employment or character, and such office, employment or character ceases to exist:

(h) where the license totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not in pursuance of a contract between the grantor and the licensee:

(i) in the case of an accessory license, when the interest or right to which it is accessory ceases to exist.

63. Where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby and to remove any goods which he has been allowed to place on such property.

Licensee's rights on revocation.

64. Where a license has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the license, the right for which he contracted, he is entitled to recover compensation from the grantor.

Licensee's rights on eviction.

Grantor's transferee not bound by license.

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